PROGRAM MATERIALS
Program #36195
July 9, 2026

# Whistleblowing, Tax Fraud, and Government Gatekeeping



- Thomas Willcox, Esq. - Principal, Law Offices of Thomas C. Willcox

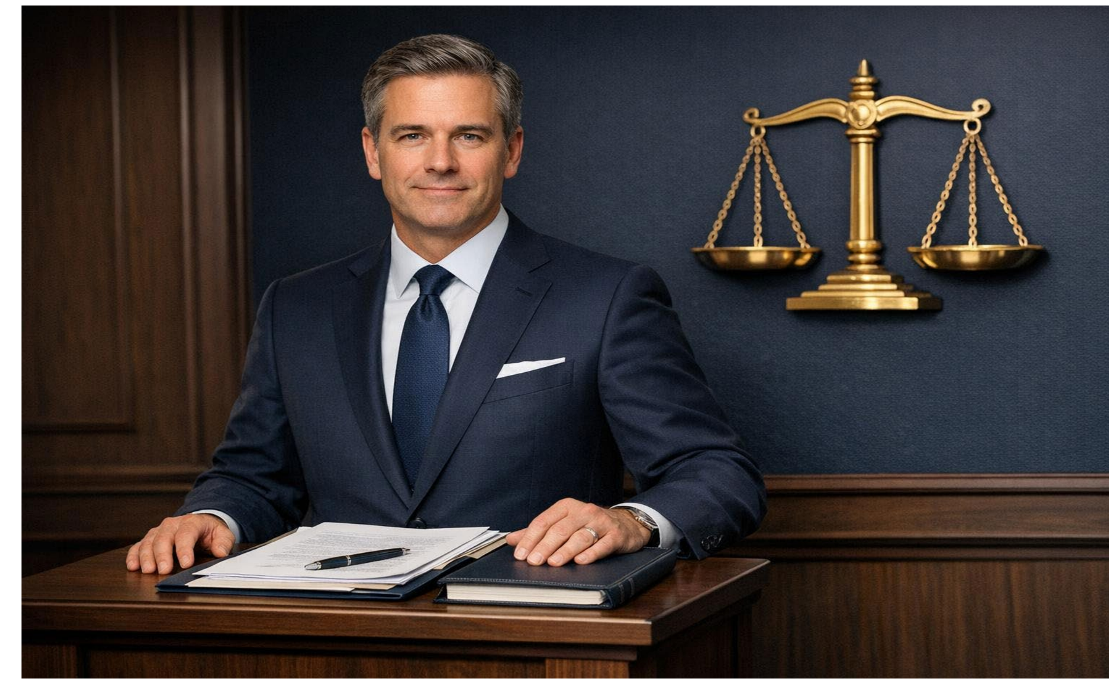


Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919

# 1 Whistleblowing, Tax Fraud, and Government Gatekeeping

*The PSINet Transactions and the Litigation That Followed - Presented by Thomas Willcox*



- **A Case Study, Not a Theory:** Whistleblowing, tax fraud, and government gatekeeping seen through the PSINet transactions and the litigation that followed in New York and federal courts.
- **Speaking as the Relator:** Firsthand account of litigating these issues - not a secondhand survey.
- **Three Sovereigns Engaged:** IRS, New York State, and New York City - including promises from government lawyers and oversight officials that were never kept.
- **Doctrine Plus Reality:** Black-letter law alongside a realistic view of how these cases unfold for relators, defense counsel, and government lawyers.
- **What You'll Take Away:** A working framework for evaluating cross-border tax-fraud and reverse false claims matters in New York.

Law Office of
**Thomas C. Willcox**

# 2 Learning Objectives


*What I hope you'll take away from the next hour - focused on New York practice*

- **Spot the Cosmetic Investigation:** Recognize red flags that an FCA-style tax investigation is going through the motions under seal - and what that means for relator or defense strategy.
- **Mine the Deal Documents:** Use offering memoranda, closing memos, cross-receipts, and agreements among initial purchasers to build economic-substance and tax-fraud arguments - even when the headline contracts say otherwise.
- **Navigate Adverse Rulings and Reluctant Government Counsel:** Handle whistleblower cases where courts believe they've already seen the fact pattern and the government custodian does not want to move forward.
- **New York Practice Lens:** Issues framed under the New York False Claims Act, the New York City corporate franchise tax, and New York preclusion law.

Law Office of
Thomas C. Willcox

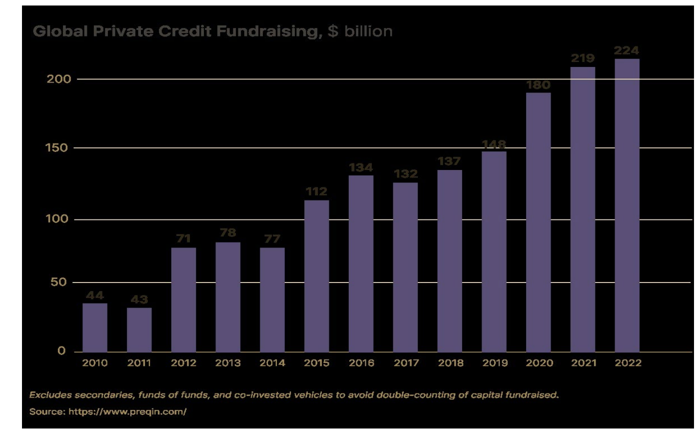
# 3 Factual Background: The PSINet Transactions

*From the 1999 placements through Willcox I and II - a fifteen-year arc on one page*


- **1999 - PSINet I and II:** Two 144A/Reg S private placements; 85% closed in New York, 15% in London; banks earned roughly $46.5 million in fees on the New York portion.
- **Substance in New York:** U.S. broker-dealer affiliates of DLJ, Bear Stearns, Merrill Lynch, and Morgan Stanley marketed to U.S. investors, ran the book, and closed in New York - roughly 85% of the economic work.
- **Form in London:** The U.K. affiliates - DLJ International, Bear Stearns International, Merrill Lynch International, Morgan Stanley International - were designated the "Initial Purchasers"; investor proceeds flowed to New York, then the fees were wired to the U.K. for a lower national rate and no state tax.
- **2001-2005 - Discovery and IRS Recommendation:** Identified the structure in unrelated litigation; filed a detailed Recommendation with the IRS in 2005; believe there was a recovery but was denied an award on a technical ground and blocked by Section 6103 confidentiality.
- **2011 - Willcox I (State):** Filed under the amended NY False Claims Act; trial court and First Department dismissed as speculative and skeptical of reverse-false-claims tax theory.
- **2016 - Avi-Yonah Opinion and Willcox II (City):** Reuven Avi-Yonah opined the structure evaded U.S., State, and City taxes; recognized NYC's separate corporate franchise tax and filed a second qui tam on behalf of the City.
- **2017 - City Takes Control:** The City formally takes over Willcox II and - in the relator's view - works to let the case die quietly under seal without ever reaching the tax-fraud theory on the merits.

Law Office of
**Thomas C. Willcox**

# 4 Chart of PSINet Fundraising Transactions, 1998-2000



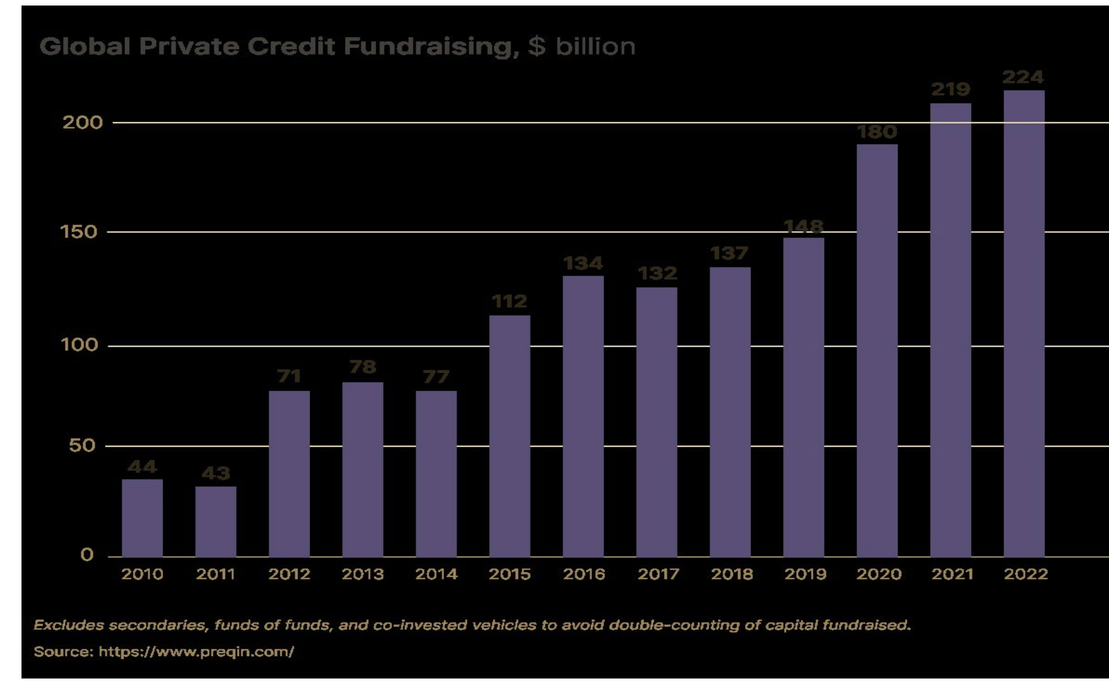



PSINET CAPITAL TRANSACTIONS 1998-2000
Source of Information: SEC Filings of PSINet

| Date | Issued | Initial Purchasers |
|---|---|---|
| April 13 1998 | $350 Million, 144a Notes | Donaldson, Lufkin & Jenrette Securities Corporation, Merrill Lynch, Pierce, Fenner & Smith Inc and Chase Securities Inc |
| November 1998 | $600 Million, 144a Notes | Donaldson, Lufkin & Jenrette Securities Corporation, Chase Securities Inc. and Morgan Stanley & Co Inc |
| July 1999 | $1,050 million US and 150 million Euro 114a | Donaldson, Lufkin & Jenrette International, Bear Stearns Co International Limited and Chase Manhattan International |
| November 1999 | $600 million US and 150 million Euro Notes, 144A | Donaldson, Lufkin & Jenrette International, Bear Stearns Co International Limited, Merrill Lynch International Limited and Morgan Stanley & Co. International |
| February 2000 | $740.2 million. preferred stock | Donaldson, Lufkin & Jenrette Securities Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, Bear, Stearns & Co. Inc., Chase Securities Inc. and BancBoston Robertson Stephens Inc. |

Law Office of
**Thomas C. Willcox**

# 5 PSINet 1999 Tax Fraud: Transaction Flow & Tax Analysis




The 1999 PSINet transactions diverted $46.56 million in underwriting fees through UK affiliates, avoiding US Federal, New York State, and New York City taxes. The slides that follow analyze the structure, geographic flow, and full tax liability.

**Total Capital Raised**

**$1.8 Billion**

PSINet I (July 1999)
+ PSINet II (Nov 1999)

**Fees Diverted Offshore**

**$46.56 Million**

2.75% spread re-routed
to London affiliates

**NY Tax Gap (State + City)**

**$10.7 Million**

NYS 9% + NYC 9% = 18%
never paid

**Est. Total Liability**

**~$85.3 Million**

Principal + 25% penalty
+ 27.7 yrs interest

Willcox v. Investment Banks | NY False Claims Act Qui Tam (2011) | IRS Report (2005) | Expert: Prof. Reuven Avi-Yonah, Univ. of Michigan Law

Law Office of
**Thomas C. Willcox**

# 6 PSINet Fundraising Pattern: 1998–2000

*Appendix A287 / A921 — UK "Initial Purchasers" structure used in 1999 only; reverted to US entities in 2000*

## 1998

**NORMAL STRUCTURE**

Lead Underwriter:

**DLJ Securities Corp. (US)**

Fee Routing:

**New York → PSINet**

Tax Treatment:

**US 35% + NYS 9% + NYC 9% = 53%**

**All fees booked in United States**

## 1999

**ANOMALOUS — TAX AVOIDANCE**

Lead Underwriter:

**Credit Suisse/DLJI (UK)**
**Merrill Lynch Intl. (UK)**
**Morgan Stanley Intl. (UK)**
**Bear Stearns Intl. (UK)**

Fee Routing:

**New York → London → PSINet**

Tax Treatment:

**UK only: 30% — NY taxes avoided**

**$46.56M in fees diverted offshore**

## 2000

**REVERTS TO NORMAL**

Lead Underwriter:

**DLJ Securities Corp. (US)**

Fee Routing:

**New York → PSINet**

Tax Treatment:

**US 35% + NYS 9% + NYC 9% = 53%**

**UK entities no longer involved**

Source: Offering Memoranda A287/A921; Agreement Among Initial Purchasers SA089–SA099

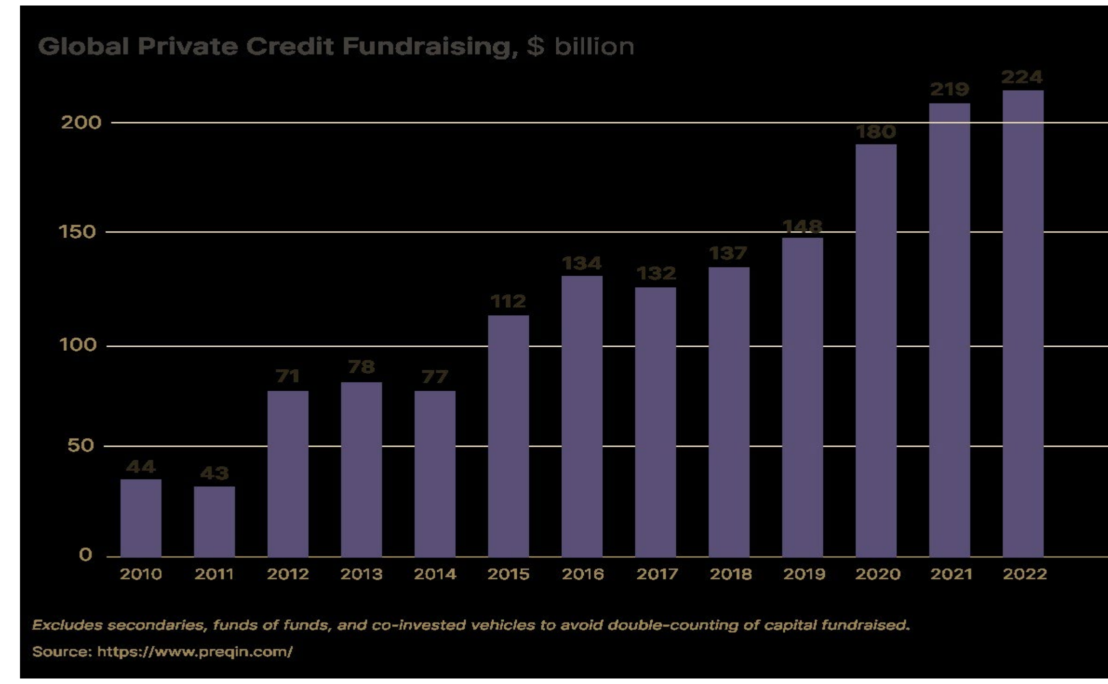
921 Ex. 1 to Proposed Second Amended Complaint
PSINet Capital Transactions, 1998-2000
A921

PSINET CAPITAL TRANSACTIONS 1998-2000
Source of Information: SEC Filings of PSINet

| Date | Issued | Initial Purchasers |
|---|---|---|
| April 13 1998 | $350 Million, 144a Notes | Donaldson, Lufkin & Jenrette Securities Corporation, Merrill Lynch, Pierce, Fenner & Smith Inc and Chase Securities Inc |
| November 1998 | $600 Million, 144a Notes | Donaldson, Lufkin & Jenrette Securities Corporation, Chase Securities Inc. and Morgan Stanley & Co Inc |
| July 1999 | $1,050 million US and 150 million Euro 114a | Donaldson, Lufkin & Jenrette International, Bear Stearns Co International Limited and Chase Manhattan International |
| November 1999 | $600 million US and 150 million Euro Notes, 144A | Donaldson, Lufkin & Jenrette International, Bear Stearns Co International Limited, Merrill Lynch International Limited and Morgan Stanley & Co. International |
| February 2000 | $740.2 million. preferred stock | Donaldson, Lufkin & Jenrette Securities Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, Bear, Stearns & Co. Inc., Chase Securities Inc. and BancBoston Robertson Stephens Inc. |

Law Office of
**Thomas C. Willcox**

# 7 1998 & 2000: Normal Transaction Flow




*All fees routed through US entities — fully subject to US Federal, New York State, and New York City taxes*

**UNITED STATES OF AMERICA**

**INVESTORS (NY)**

Ultimate Purchasers
New York

Capital

**US BANKS (NY)**

DLJ Securities
Merrill Lynch
Morgan Stanley
Bear Stearns

Capital + 2.75% Fees

**PSINet Inc.**

Ashburn, VA
New York office

**TAX RESULT:** US Federal Corporate Tax 35% = $16,296,000

**NY State Banking Corp. Tax (Art. 32 §1455)** 9% = $4,190,400

**NYC Banking Corp. Tax (Admin. Code §11-640)** 9% = $4,190,400

**TOTAL EFFECTIVE RATE: 53% = $24,676,800**

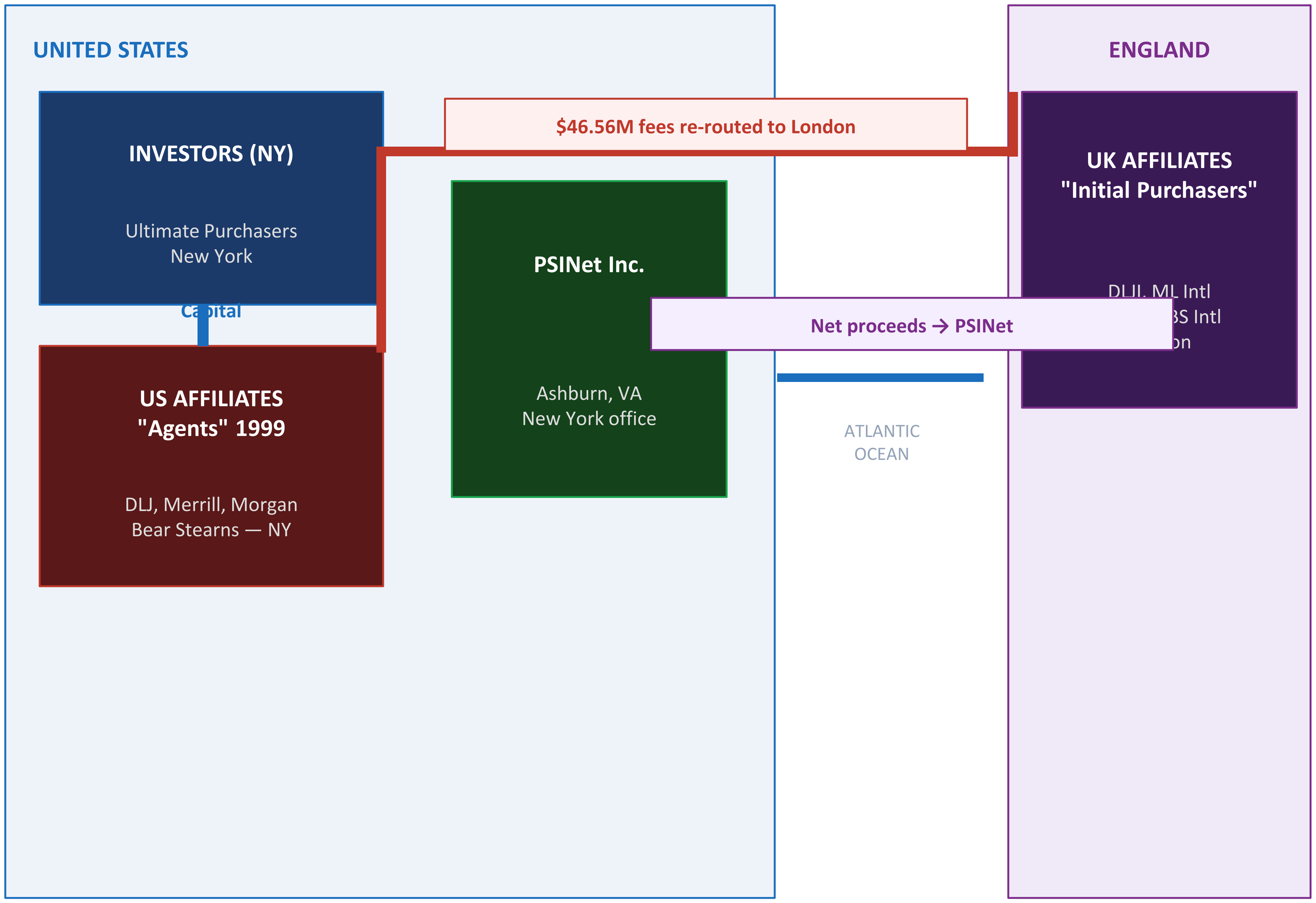
Authority: 26 U.S.C. §861(a)(3) — US-source income; NY Tax Law Art. 32 §1455; NYC Admin. Code §11-640

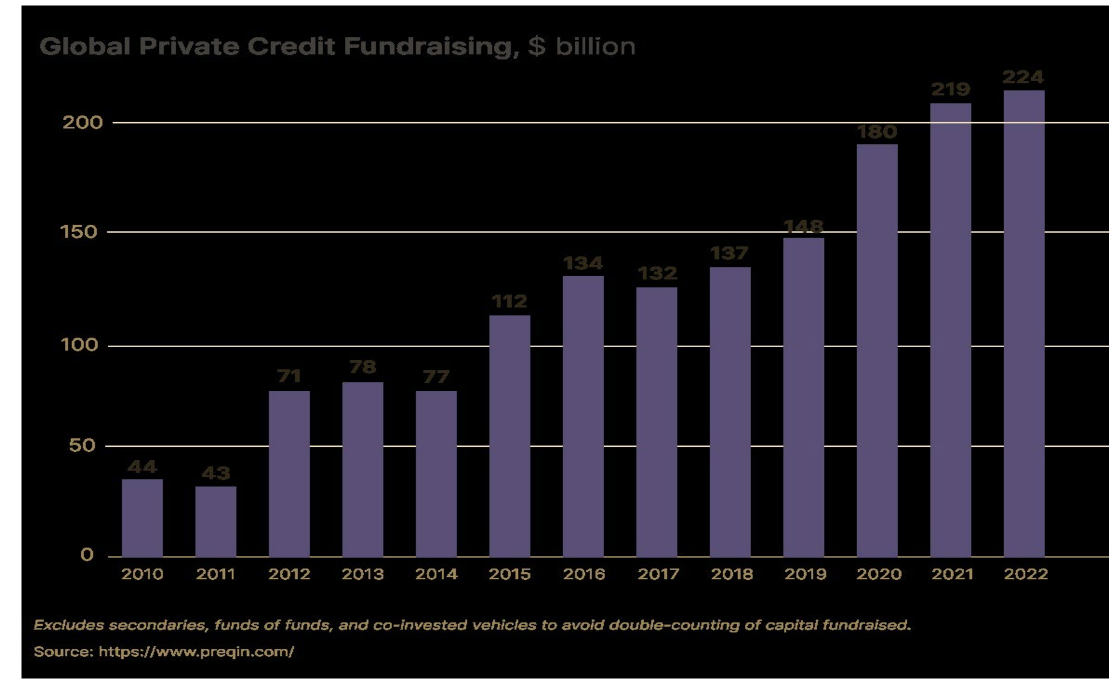
Law Office of
**Thomas C. Willcox**

# 8

# 1999: Anomalous Flow — Offshore Tax Avoidance

*US affiliates relabeled as "agents"; UK affiliates inserted as nominal Initial Purchasers to divert $46.56M offshore*




**TAX EVASION:** Only UK 30% paid on $46.56M. Evaded: NYS 9% + NYC 9% = 18% = **$10,708,800 in NY taxes unpaid**

Key: Simultaneous closing = UK bore ZERO market risk. US affiliates signed as agents and listed on offering memoranda covers (A061, A242; SA138–SA139)

Law Office of
**Thomas C. Willcox**

# 9 Transaction Structure: 1998–2000 Comparison

*Side-by-side structural analysis showing why 1999 was a uniquely engineered tax avoidance transaction*

| Feature | 1998 & 2000 (Normal) | 1999 Only (Anomalous) |
|---|---|---|
| **Year(s)** | 1998, 2000 | 1999 Only |
| **Capital Raised** | ~$400M each year | $840M (July) + $960M (Nov) = $1.8B |
| **Lead Role** | DLJ Securities Corp. (US) | UK Affiliates — "Initial Purchasers" |
| **US Affiliates Role** | Lead Underwriters | "Agents" only — relabeled |
| **Fee Amount** | 2.75% of offering | 2.75% = $46.56M to London |
| **Fee Destination** | New York (US) | London, England (UK) |
| **Market Risk** | US entities | UK — simultaneous close = ZERO risk |
| **Tax Jurisdiction** | US Federal + NY State + NYC | United Kingdom only |
| **Effective Tax Rate** | 53% (35% + 9% + 9%) | 30% (UK only) |
| **Legal Authority** | 26 U.S.C. §861(a)(3) | UK Finance Act 1999 |

Sources: Offering Memoranda A061, A242, SA138–SA139; Agreement Among Initial Purchasers SA089–SA099

921

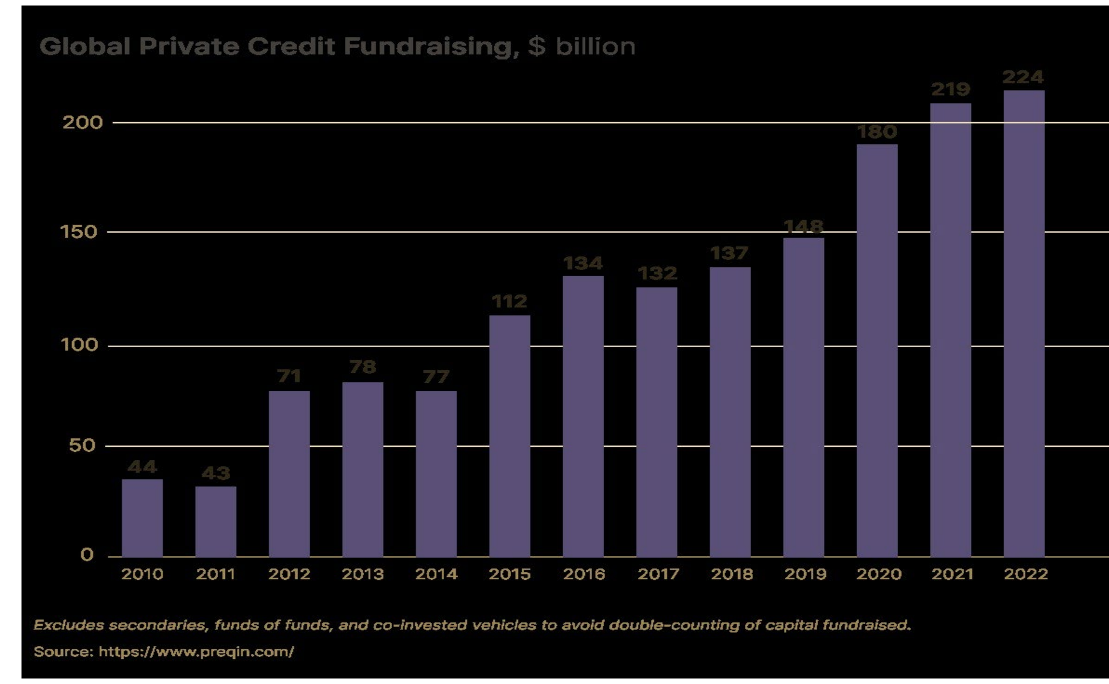
Ex. 1 to Proposed Second Amended Complaint
PSINet Capital Transactions, 1998-2000
A921

PSINET CAPITAL TRANSACTIONS 1998-2000
Source of Information: SEC Filings of PSINet

| Date | Issued | Initial Purchasers |
|---|---|---|
| April 13 1998 | $350 Million, 144a Notes | Donaldson, Lufkin & Jenrette Securities Corporation, Merrill Lynch, Pierce, Fenner & Smith Inc and Chase Securities Inc |
| November 1998 | $600 Million, 144a Notes | Donaldson, Lufkin & Jenrette Securities Corporation, Chase Securities Inc. and Morgan Stanley & Co Inc |
| July 1999 | $1,050 million US and 150 million Euro 114a | Donaldson, Lufkin & Jenrette International, Bear Stearns Co International Limited and Chase Manhattan International |
| November 1999 | $600 million US and 150 million Euro Notes, 144A | Donaldson, Lufkin & Jenrette International, Bear Stearns Co International Limited, Merrill Lynch International Limited and Morgan Stanley & Co. International |
| February 2000 | $740.2 million. preferred stock | Donaldson, Lufkin & Jenrette Securities Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, Bear, Stearns & Co. Inc., Chase Securities Inc. and BancBoston Robertson Stephens Inc. |

Law Office of
**Thomas C. Willcox**

# 10 Tax Liability: Should Have Paid vs. Actually Paid




*Applied to $46,560,000 in underwriting fees (2.75% of $1.8B raised in 1999)*

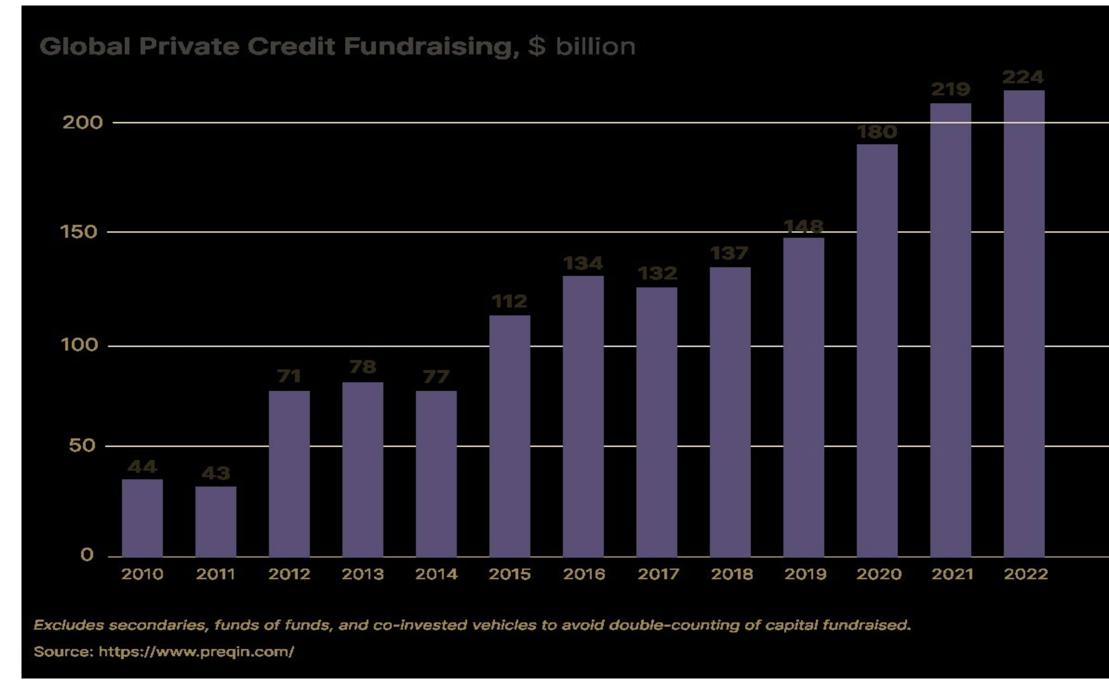
| SHOULD HAVE PAID (US Routing) | | | VS. | ACTUALLY PAID (UK Routing) | | |
|---|---|---|---|---|---|---|
| **US Federal Corporate Tax**<br>26 U.S.C. §11 | 35% | $16,296,000 | | **UK Corporation Tax**<br>Finance Act 1999 / HMRC | 30% | $13,968,000 |
| **NY State Banking Corp. Tax**<br>Tax Law Art. 32 §1455 | 9% | $4,190,400 | | **UK "State" Tax**<br>No subnational corporate tax in UK | 0% | $0 |
| **NYC Banking Corp. Tax**<br>Admin. Code §11-640 | 9% | $4,190,400 | | **UK "City" (London) Tax**<br>No city-level corporate tax in UK | 0% | $0 |
| **TOTAL: 53% = $24,676,800** | | | | **TOTAL: 30% = $13,968,000** | | |

**NY TAX GAP:** NYS 9% ($4,190,400) + NYC 9% ($4,190,400) = **$8,380,800 evaded**

Law Office of
**Thomas C. Willcox**

# 11 Tax Gap & Estimated Liability with Penalties

*NY State & City banking corporation taxes owed since 1999 — with 25+ years of penalties and compound interest*

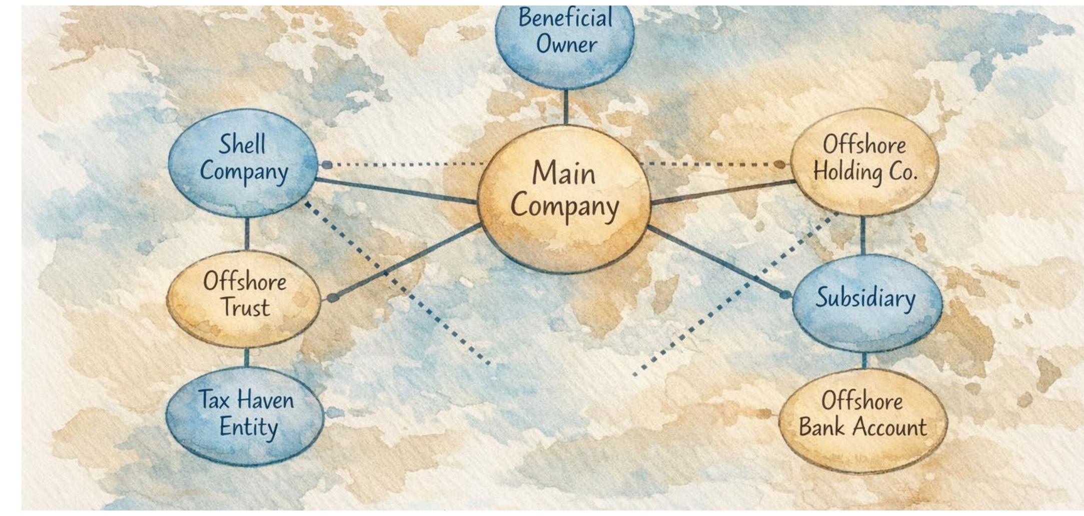



| | |
|---|---|
| Federal Tax Gap (US 35% – UK 30%)<br>5% of $46.56M | $2,328,000 |
| NY State Tax Evaded (9%)<br>Art. 32 §1455 — not paid | $4,190,400 |
| NYC Tax Evaded (9%)<br>Admin. Code §11-640 — not paid | $4,190,400 |
| **SUBTOTAL — NY Tax Gap (State + City)**<br>Combined NY evaded taxes | $8,380,800 |
| Late-Payment Penalty (25% cap)<br>0.5%/month, capped ~2003 | $2,092,500 |
| Compound Interest (~8.85% APR)<br>27.7 years (1999 – Jan 2027) | ~$74,860,000 |
| **ESTIMATED TOTAL NY LIABILITY** | **~$85,333,000 (≈ 11× original principal)** |

Interest: 8.85% APR daily compounding, 27.7 years. Penalty: 0.5%/mo capped at 25% per NY Tax Law §1085. Expert: Prof. Reuven Avi-Yonah, Univ. of Michigan Law School.

Law Office of
**Thomas C. Willcox**

# 12 Segment 1: The Transaction and the Tax Posture




- The PSINet I and II offering memoranda and the role of US affiliates as initial purchasers.
- How the deal structure interacts with assignment of income and sourcing of services.
- Early efforts to report fraud to the IRS and the resulting paper trail.
- Why this transaction surfaced under the NYC False Claims Act.
- Set-up question: what does the documentary record actually show?

Law Office of
Thomas C.
Willcox

# 13 PSINet I – Offering Memorandum, Front Cover

- 

321

Ex. B to Katz Affirmation
PSINet Offering Memorandum
July 16, 1999
A320-A502

**Offering Memorandum**
**July 16, 1999**

**PSINet**

**$1,050,000,000**
**11% Senior Notes due 2009**
**€150,000,000**
**11% Senior Notes due 2009**

**The Company:**
- We are the leading independent global provider of Internet solutions to businesses.
- PSINet Inc.
  510 Huntmar Park Drive
  Herndon, Virginia 20170
  (703) 904-4100

**Proposed Trading Format:**
- The PORTAL market or directly with qualified buyers.
- Application has been made to list the euro notes on the Luxembourg Stock Exchange. No application has been made to list the dollar notes on the Luxembourg Stock Exchange.

**The Offering:**
- Gross Proceeds: $1,050,000,000 from the issuance of the dollar notes and €150,000,000 from the issuance of the euro notes.
- Use of Proceeds: We plan to use the net proceeds to finance capital expenditures, including the acquisition of additional telecommunications bandwidth and related facilities and equipment and the construction of Internet data centers, and for general corporate purposes. We also plan to use a portion to fund acquisitions or investments.
- Registration Rights: Exchange offer registration statement to be filed within 75 days of the closing of this offering.
- Closing: Delivery of the notes in global form will be made through one or more depositaries on July 23, 1999, which we refer to as the Closing Date.

**The Notes:**
- Maturity: August 1, 2009.
- Interest Payments: Semi-annually in cash in arrears on February 1 and August 1, commencing on February 1, 2000.
- Redemption: We can redeem the notes on or after August 1, 2004. In addition, we can redeem up to 35% of the dollar notes and up to 35% of the euro notes prior to August 1, 2002, with the net proceeds of a public equity offering or certain private equity placements.
- Ranking: The notes will be general unsecured obligations, ranking junior to our secured obligations and to any indebtedness and other liabilities of our subsidiaries.

| | Price Per Note | Total |
|---|---|---|
| Dollar notes | 100% | $1,050,000,000 |
| Euro notes | 100% | €150,000,000 |

*This investment involves risk. See "Risk Factors" beginning on page 10.*

**We have not registered these securities under the Securities Act of 1933 or under any state securities laws. Therefore, we may not offer or sell these securities within the United States or to, or for the account or benefit of, any U.S. person unless the offer or sale would qualify for a registration exemption from the Securities Act of 1933 and state securities laws. Accordingly, we are only offering these securities: (i) to QIBs (as defined in Rule 144A of the Securities Act of 1933) and (ii) outside the United States in compliance with Regulation S of the Securities Act of 1933.**

Donaldson, Lufkin & Jenrette
Bear, Stearns & Co. Inc.
Chase Securities Inc.

Law Office of
**Thomas C. Willcox**

# 14 PSINet I – Offering Memorandum. Back Cover

July 16, 1999

PSINet

**$1,050,000,000**
**11% Senior Notes due 2009**
**€150,000,000**
**11% Senior Notes due 2009**

**OFFERING MEMORANDUM**

Donaldson, Lufkin & Jenrette
Bear, Stearns & Co. Inc.
Chase Securities Inc.

We have not authorized any dealer, salesperson or other person to give you written information other than this offering memorandum or to make representations as to matters not stated in this offering memorandum. You must not rely on unauthorized information. This offering memorandum is not an offer to sell these securities or our solicitation of your offer to buy the securities in any jurisdiction where that would not be permitted or legal. Neither the delivery of this offering memorandum nor any sales made hereunder after the date of this offering memorandum shall create an implication that the information contained herein or the affairs of PSINet have not changed since the date hereof.

Law Office of
Thomas C. Willcox

# 15 PSINet II – Offering Memorandum, Front Cover

November 24, 1999
A503-A676

Offering Memorandum
November 24, 1999

PSINet

**$600,000,000**
**10½% Senior Notes due 2006**
**€150,000,000**
**10½% Senior Notes due 2006**

**The Company:**

- We are a leading independent global provider of Internet and eCommerce solutions to businesses.
- PSINet Inc.
  510 Huntmar Park Drive
  Herndon, Virginia 20170
  (703) 904-4100

**Proposed Trading Format:**

- The PORTAL market or directly with qualified buyers.
- Application has been made to list the euro notes on the Luxembourg Stock Exchange. We cannot assure you that a listing will be obtained. Any prospective purchaser is advised to check the listing status with the listing agent in Luxembourg, where a listing prospectus will be made available free of charge. No application has been, or will be, made to list the dollar notes on the Luxembourg Stock Exchange.

**The Offering:**

- Gross Proceeds: U.S. $600,000,000 from the issuance of the dollar notes and €150,000,000 from the issuance of the euro notes.
- Use of Proceeds: We plan to use the net proceeds to finance capital expenditures, including the acquisition of additional telecommunications bandwidth and related facilities and equipment and the construction of Internet data centers, and for general corporate purposes. We also plan to use a portion to fund acquisitions or investments.
- Registration Rights: Exchange offer registration statement to be filed within 75 days of the closing of this offering.
- Closing: Delivery of the notes in global form will be made through one or more depositaries on December 2, 1999, which we refer to as the Closing Date.

**The Notes:**

- Maturity: December 1, 2006.
- Interest Payments: Semi-annually in cash in arrears on June 1 and December 1, commencing on June 1, 2000.
- Redemption: We may not redeem the notes at any time.
- Ranking: The notes will be general unsecured obligations, ranking junior to our secured obligations and to any indebtedness and other liabilities of our subsidiaries.

| | Price Per Note | Total |
|---|---|---|
| Dollar notes | 100% | $ 600,000,000 |
| Euro notes | 100% | €150,000,000 |

***This investment involves risk. See "Risk Factors" beginning on page 12.***

We have not registered these securities under the Securities Act of 1933 or under any state securities laws. Therefore, we may not offer or sell these securities within the United States or to, or for the account or benefit of, any U.S. person unless the offer or sale would qualify for a registration exemption from the Securities Act of 1933 and state securities laws. Accordingly, we are only offering these securities: (i) to QIBs (as defined in Rule 144A of the Securities Act of 1933) and (ii) outside the United States in compliance with Regulation S of the Securities Act of 1933.

**Donaldson, Lufkin & Jenrette**
**Bear, Stearns & Co. Inc.**
**Merrill Lynch & Co.**
**Morgan Stanley Dean Witter**

Law Office of
**Thomas C. Willcox**

# 16 PSINet II – Offering Memorandum, Back Cover

A503 A676

November 24, 1999

PSINet

$600,000,000
10½% Senior Notes due 2006
€150,000,000
10½% Senior Notes due 2006

OFFERING MEMORANDUM

Donaldson, Lufkin & Jenrette
Bear, Stearns & Co. Inc.
Merrill Lynch & Co.
Morgan Stanley Dean Witter

We have not authorized any dealer, salesperson or other person to give you written information other than this offering memorandum or to make representations as to matters not stated in this offering memorandum. You must not rely on unauthorized information. This offering memorandum is not an offer to sell these securities or our solicitation of your offer to buy the securities in any jurisdiction where that would not be permitted or legal. Neither the delivery of this offering memorandum nor any sales made hereunder after the date of this offering memorandum shall create an implication that the information contained herein or the affairs of PSINet have not changed since the date hereof.

Law Office of
Thomas C.
Willcox

# 17 PSINet II Cross-Receipt (Exhibit F-1) – Dollar Notes

**EXHIBIT F-1**

**CROSS-RECEIPT**

The undersigned, Donaldson, Lufkin & Jenrette Securities Corporation, Bear, Stearns International Limited, Merrill Lynch International and Morgan Stanley & Co. International Limited (collectively, the "Initial Purchasers"), hereby deliver to PSINet Inc., a New York corporation (the "Issuer"), by wire transfer in same day funds, the aggregate amount of $586,440,000 in accordance with wiring instructions previously delivered to the Initial Purchasers by the Issuer, representing payment in full of the purchase price for $600,000,000 in aggregate principal amount of the Issuer's 10½% Senior Notes due 2006 (the "Dollar Notes"), in accordance with the provisions of the Purchase Agreement, dated November 24, 1999, among the Issuer and the Initial Purchasers.

The undersigned hereby acknowledges receipt from the Issuer of $600,000,000 aggregate principal amount of the Dollar Notes, said Dollar Notes being in the denominations, and registered in the names, requested by the Initial Purchasers.

DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION
BEAR, STEARNS INTERNATIONAL LIMITED
MERRILL LYNCH INTERNATIONAL
MORGAN STANLEY & CO. INTERNATIONAL LIMITED

By: DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION

By: ______________________________
Name:
Title:

Date: December 2, 1999

# 18 PSINet II Cross-Receipt (Exhibit F-2) – Euro Notes

**EXHIBIT F-2**

**CROSS-RECEIPT**

The undersigned, Donaldson, Lufkin & Jenrette International, Bear, Stearns International Limited, Merrill Lynch International and Morgan Stanley & Co. International Limited (collectively, the "Initial Purchasers"), hereby deliver to PSINet Inc., a New York corporation (the "Issuer"), by wire transfer in same day funds, the aggregate amount of Euro 146,610,000 in accordance with wiring instructions previously delivered to the Initial Purchasers by the Issuer, representing payment in full of the purchase price for Euro 150,000,000 in aggregate principal amount of the Issuer's 10½% Senior Notes due 2006 (the "Euro Notes"), in accordance with the provisions of the Purchase Agreement, dated November 24, 1999, among the Issuer and the Initial Purchasers.

The undersigned hereby acknowledges receipt from the Issuer of Euro aggregate principal amount of the Euro Notes, said Euro Notes being in the denominations, and registered in the names, requested by the Initial Purchasers.

DONALDSON, LUFKIN & JENRETTE INTERNATIONAL
BEAR STEARNS INTERNATIONAL LIMITED
MERRILL LYNCH INTERNATIONAL
MORGAN STANLEY & CO. INTERNATIONAL LIMITED

By: DONALDSON, LUFKIN & JENRETTE INTERNATIONAL

By: ______________________________
Name:
Title:

Date: December 2, 1999

# PSINet II Cross-Receipt (Exhibit F-3) – PSINet Acknowledgment

EXHIBIT F-3

CROSS-RECEIPT

The undersigned, PSINet Inc., a New York corporation (the "Issuer"), hereby acknowledges receipt from Donaldson, Lufkin & Jenrette International, Bear Stearns International Limited, Merrill Lynch International, and Morgan Stanley & Co. International Limited (collectively, the "Initial Purchasers"), by wire transfer in same day funds, of the aggregate amount of $586,440,000 in accordance with wiring instructions previously delivered by the Issuer to the Initial Purchasers, representing payment in full of the purchase price for $600,000,000 in aggregate principal amount of the Issuer's 10½% Senior Notes due 2006 (the "Dollar Notes"), in accordance with the provisions of the Purchase Agreement, dated November 24, 1999, among the Issuer and the Initial Purchasers.

The undersigned has delivered to the Initial Purchasers $600,000,000 aggregate principal amount of the Dollar Notes, said Dollar Notes being in the denominations, and registered in the names, requested by the Initial Purchasers.

PSINET INC.

By: ______________________________

Edward D. Postal
Executive Vice President and Chief Financial Officer

Date: December 2, 1999

# 20 Comfort-Letter Requests: U.S. Dealers as Initial Purchasers

November - December 1999
A160-A171

**Document Executed by the US Placement Agents as "Initial Purchasers"**

Letter dated November 22, 1999, from J. Gelles of Morgan Stanley & Co. To Price Waterhouse Coopers LLP ("PWC") (No. 34).

Letter dated November 22, 1999 executed by Colin R. Knudson of Donaldson, Lufkin & Jenrette Securities Corporation ("DLJSC") to PWC, (No. 36).

Letter dated November 22, 1999 from [illegible] of Merrill Lynch & Co to PWC (No. 37).

Letter dated November 22, 1999 from L. Alletto on behalf of Bear Stearns & Co. (No. 40).

Exhibit F-1 to Closing Memorandum, "Cross -Receipt" executed (in type only) by DLJSC (No. 122).

Agreement between "Initial Purchasers" dated 12/2/99, executed by Merrill Lynch (No. 136), and Morgan Stanley & Co. (No. 137).

Letter dated November 22, 1999, executed by Colin R. Knudson on behalf of DLJSC (No. 141).

Letter dated November 22, 1999, executed by L. Alletto on behalf of Bear Stearns (No. 145).

Letter dated November 22, 1999, executed by J. Gelles on behalf of Morgan Stanley & Co. (No. 146).

Law Office of
Thomas C. Willcox

# 21 US Affiliates as Initial Purchasers, Front Page

**$600,000,000 10½% Senior Notes Due 2006**

**and**

**Euro 150,000,000 10½% Senior Notes Due 2006**

**of PSINet Inc.**

**Agreement between Initial Purchasers**

December 2, 1999

Donaldson, Lufkin & Jenrette International
as Lead Manager
99 Bishopsgate
London, EC2M 3YH
England

Dear Ladies and Gentlemen:

We understand that PSINet Inc., a New York corporation (the "**Company**"), proposes to issue and sell to the several Initial Purchasers (as defined below) an aggregate of Euro 150,000,000 in principal amount of its 10½% Senior Notes due 2006 (the "**Euro Notes**") and $600,000,000 principal amount of its 10½% Senior Notes due 2006 (the "**Dollar Notes**" and, together with the Euro Notes, the "**Notes**") pursuant to a purchase agreement, dated as of the date hereof, substantially in the form attached hereto as **Exhibit A** (the "**Purchase Agreement**"), with Donaldson, Lufkin & Jenrette International ("**DLJI**"), Bear Stearns International Limited ("**BSIL**") Merrill Lynch International ("MLI"), and Morgan Stanley & Co. International Limited ("MSI"and, collectively with DLJI, BSIL and MLI, the "**Initial Purchasers**").

The Notes will be offered without being registered under the United States Securities Act of 1933, as amended (the "**Securities Act**"), in reliance on exemptions therefrom. Notes sold in reliance on Regulation S of the Securities Act will be represented by one or more Notes (the "**Regulation S Notes**"). Notes sold in reliance on Rule 144A of the Securities Act will be represented by one or more Notes (the "**144A Notes**").

1. Sales of Notes. We acknowledge and agree that (i) all sales by us of beneficial interests in the Regulation S Notes will be made exclusively by us, (ii) all sales by you of beneficial interests in the Regulation S Notes will be made exclusively by you, (iii) all sales by us of beneficial interests in the 144A Notes will be made through our United States affiliates named in **Schedule B-2** to the Purchase Agreement and (iv) all sales by you of beneficial interests in the 144A Notes will be made through

Law Office of
**Thomas C. Willcox**

# 22 Agreement Between Initial Purchasers – Merrill Lynch Signature

166

2005 RECOMMENDATION EXHIBIT
Documents Executed by Initial Purchasers
November - December 1999
A160-A171

This Agreement between Initial Purchasers is being executed by us and delivered to you in duplicate. Please indicate your receipt of identical agreements from each of the other Initial Purchasers by confirming this Agreement, whereupon it shall constitute a binding agreement between us.

**Merrill Lynch & Co.**

By: ______________________________
Name:
Title:

Address for Notices:

**Morgan Stanley Dean Witter**

By: ______________________________
Name:
Title:

Address for Notices:

**Bear Stearns International Limited**

By: ______________________________
Name:
Title:

Address for Notices:

# 23 Agreement Between Initial Purchasers – Morgan Stanley Signature

This Agreement between Initial Purchasers is being executed by us and delivered to you in duplicate. Please indicate your receipt of identical agreements from each of the other Initial Purchasers by confirming this Agreement, whereupon it shall constitute a binding agreement between us.

**Merrill Lynch & Co.**

By: ______________________________

Name:

Title:

Address for Notices:

**Morgan Stanley & Co. Inc.**

By: ______________________________

Name: Jeffrey H Gelles

Title: Vice President

Address for Notices:

**Bear Stearns International Limited**

By: ______________________________

Name:

Title:

Address for Notices:

# 24 Agreement Between Initial Purchasers – Bear Stearns Signature

182

2005 RECOMMENDATION EXHIBIT
Agreement Between Initial Purchasers
December 2, 1999
A172-A183

This Agreement between Initial Purchasers is being executed by us and delivered to you in duplicate. Please indicate your receipt of identical agreements from each of the other Initial Purchasers by confirming this Agreement, whereupon it shall constitute a binding agreement between us.

**Merrill Lynch & Co.**

By: ______________________________
Name:
Title:

Address for Notices:

**Morgan Stanley Dean Witter**

By: ______________________________
Name:
Title:

Address for Notices:

**Bear Stearns International Limited**

By: ______________________________
Name: L. Alletto
Title: Senior Managing Director

Address for Notices:

Law Office of
**Thomas C. Willcox**

# 25 Azurix

COMPANY DATA:
COMPANY CONFORMED NAME: AZURIX CORP
CENTRAL INDEX KEY: 0001080205
STANDARD INDUSTRIAL CLASSIFICATION: WATER SUPPLY [4941]
IRS NUMBER: 760589114
STATE OF INCORPORATION: DE
FISCAL YEAR END: 1231

.................................................................. 18

ITEM 5. OTHER EVENTS.

The registrant's press release dated February 11, 2000, regarding its intention to sell U.S.$240 million aggregate principal amount of 10 3/8% Senior Notes due 2007, U.K. (pound)100 million aggregate principal amount of 10 3/8% Senior Notes due 2007 and U.S. $200 million aggregate principal amount of 10 3/4% Senior Notes due 2010, is attached.

.................................................................. 20

Property, plant and equipment, net.................... $2,254.4 $2,408.7

======== ======== .................... 127

4.1 Indenture, dated February 18, 2000, between the Registrant and Chase Bank of Texas, National Association, as Trustee
4.2 Registration Rights Agreement, dated February 18, 2000, by and among the Registrant and the Initial Purchasers for the Dollar-Denominated Senior Notes and the Initial Purchases for the Sterling-Denominated Senior Notes .................... 193

# 26 Versatel

F-4 1 u44498f-4.htm VERSATEL TELECOM INTERNATIONAL N.V.
s

As filed with the staff of the Securities and Exchange Commission on October 12, 2001

Lehman Brothers Inc., an affiliate of Lehman Brothers International (Europe), was an initial purchaser in the First High Yield Offering. Lehman Brothers Inc., Lehman Brothers International (Europe) and Paribas Corporation, an affiliate of Paribas, were the initial purchasers in the Second High Yield Offering. Lehman Brothers International (Europe), ING Barings Limited and ING Barings LLC are underwriters in the Third HighYield Offering. ING Barings Limited and ING Barings LLC are each affiliates of the other. Hambrecht & Quist LLC, an underwriter in this offering, will act as a qualified independent underwriter, as defined in Rule 2720 of the Conduct Rules of the National Association of Securities Dealers, Inc., in the Third High Yield Offering. Paribas Deelnemingen N.V., an affiliate of each of Paribas and Paribas Corporation, is a shareholder of VersaTel. Lehman Commercial Paper Inc., an affiliate of each of Lehman Brothers Inc. and Lehman Brothers (International) Europe, and ING (U.S.) Capital, LLC, an affiliate of each of ING Barings Limited and ING Barings LLC, are lenders under the Interim Loans, which will be repaid

with a portion of the net proceeds of the Third High Yield Offering.

The underwriters of the offering of the Shares and ADSs in the United States and Canada, for whom Lehman Brothers Inc. is acting as global coordinator and U.S. representative, have severally but not jointly agreed, subject to the terms and conditions of a U.S. underwriting agreement (the form of which is filed as an exhibit to the Registration Statement of which this prospectus is a part), to purchase from VersaTel and the selling shareholders the following respective numbers of ordinary shares in the form of Shares and ADSs:

The underwriters of the concurrent offering of the Shares and ADSs outside the United States and Canada, for whom Lehman Brothers International (Europe) is acting as global coordinator and lead manager, have severally but not jointly agreed, subject to the terms and conditions of an international underwriting agreement (the form of which is filed as an exhibit to the Registration Statement of which this prospectus is a part) to purchase from VersaTel and the selling shareholders the following respective numbers of ordinary shares in the form of Shares and ADSs:

# 27 IRS Office of the Whistleblower Letter


845

Ex. C to Willcox Affidavit
Letter from IRS to Relator
June 29, 2007
A845

WHISTLEBLOWER OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

June 29, 2007

Mr. Thomas C. Willcox
Attorney at Law
1020 19th Street, N.W., Suite 400
Washington, D.C. 20036

Dear Mr. Willcox:

This is in response to your recent correspondence concerning the denial of claims for reward under Section 7623 of the Internal Revenue Code. In previous correspondence, you asked me to review the denial of reconsideration of a claim you submitted. You asked whether the review by my office was still in process. You also said you are concerned that recent correspondence from Ogden was sent to your home address—that there was an implicit message that you should stop making claims or the IRS "will take more interest in your taxes."

After receiving your initial correspondence in March of this year, I asked a member of the Whistleblower Office staff to make inquiries into the decision to deny the claim you submitted. He reviewed the analysis and evidence supporting the denial, and found it thorough and well reasoned. I understand that the information available to you leads you to a different conclusion, but I am not permitted to share the IRS analysis and evidence with you because of the strict taxpayer privacy provisions of Section 6103 of the Internal Revenue Code.

With respect to your concern that requests for reconsideration may prompt the IRS to take more interest in your taxes," all I can say is that your concern is unfounded. The inability of the IRS to provide information about the reasons why claims are denied prompts some claimants to seek reconsideration. We draw no negative conclusions about claimants who do so, and persistence in correspondence with the IRS is not a criterion for selecting returns for examination.

Stephen Whitlock
Director

Law Office of
**Thomas C. Willcox**

# 28 New York State False Claims Act


§ 190. CIVIL ACTIONS FOR FALSE CLAIMS ..... 4
1. Civil enforcement actions. ..... 4
2. Qui tam civil actions ..... 5
(a) Any person May Bring An Action ..... 5
(b) Service of complaint on municipalit y ..... 5
(c) Events Prior to Expiration of 60 Day Period ..... 6
(i) File a complaint ..... 6
(ii) Intervene ..... 6
(iii) Local government options ..... 6
(A) Substitute ..... 6
(B) Intervene ..... 6
(d) Relation Back , ..... 6
(e) Timing of Motion to Intervene ..... 7
(f) State's Declination to Intervene ..... 7
3. Time to answer. ..... 7
4. Related actions ..... 8
5. Related Actions ..... 8
6. Rights of the parties of qui tam actions. ..... 8
(b) State's Options post filing ..... 9
(i) State May Move to Dismiss ..... 9
(ii) State May Settle Action ..... 9
(iii) State May Bar restrict qui tam plaintiff's actions ..... 10
d. Alternative Actions for Attorney General to Supersedeing Or Intervening ..... 10
6. Awards to qui tam plaintiff ..... 10
(a) If the attorney general elects to convert the qui tam civil action into AG Action ..... 10
§ 190-a. MONIES RECOVERED ..... 13
§ 190-b. Medicaid fraud recovery reporting. ..... 13
§ 191. REMEDIES ..... 13
§ 192. LIMITATION OF ACTIONS, BURDEN OF PROOF ..... 14
1. Ten Years ..... 14

Law Office of
Thomas C. Willcox

# 29 Statute of Limitations: Relator vs. State/City


- If fraud is established, there is no statute of limitation for civil assessments, 26 U.S.C. §6501(c)(1) and (2),
- NYS, Tax Law § 1147, or
- for New York City civil tax fraud claims. NYC AC 11-674 (3)(a)(2).
- Therefore, a deficiency created by fraud is never extinguished until satisfied

Law Office of
Thomas C. Willcox

# 30 Avi-Yonah Opinion


Office (734) 647-4033
Fax (734) 764-8309
aviyonah@umich. edu

Reuven S. Avi-Yonah
*Irwin L Cohn Professor of Law and Director*
*Director: International Tax LL.M. Program*

June 2,2016

Mr. Thomas C. Willcox, Esq.
1717 K Street, N.W., 9th Floor
Washington, D.C.

RE: State of New York ex rel. Thomas C. Willcox vs. Credit Suisse et al.

Dear Mr. Willcox,

You have requested my opinion in regard to the application of federal, New York State and New York City income taxes to certain transactions that took place in New York City in July and November 1999. In these transactions (the "Placements") PSINet, a Delaware corporation, raised over $1.6 billion in two private offerings that qualified as private placements under SEC Rule 144a. The defendants and their UK Affiliates in the above actions are investment banks (including their predecessors in interest, that appeared to act as "initial purchasers" of the notes issued by PSINet and then re-sold them at a gain to investors in the U.S. and the UK (hereinafte the US Afflliates may be referred to as the "Defendants".

According to the facts described below, 85% of the investors in the PSINet notes were U.S. based, the actual work related to the Placements was performed by the U.S. based affiliates (the "US Affiliates") of the U.K. based affiliates of the Defendants (the "U.K. Affiliates"), and the closing for both placements took place in New York City. Nevertheless, the Defendants claimed that the actual initial purchasers of the PSINet notes in both Placements were the U.K. affiliates, while the U.S. Affiliates merely assisted in the sale of the notes in the U.S. The Placements were apparently structured in this way to avoid U.S. federal, New York State and New York City income tax.

On the basis of the facts described more fully below, in my opinion, the income earned by the Defendants from the Placements should have been subject to U.S. federal and New York State and City income tax, as they applied in 1999.[1]

[1] The income may in fact have been subject to federal tax under an agreement between the Defendants and the IRS, which is reflected in the IRS file. While you have not been paid a reward, in my experience, many whistleblowers fail to collect rewards even when the IRS succeeds in collecting tax because of procedural hurdles



Law Office of
Thomas C.
Willcox

# 31 Willcox I, Page 1

**140 A.D.3d 622 (2016)**
**36 N.Y.S.3d 89**
**2016 NY Slip Op 05078**

**STATE OF NEW YORK ex rel. THOMAS C. WILLCOX, Appellant,**
**v.**
**CREDIT SUISSE SECURITIES (USA) LLC et al., Respondents.**

1584, 100185/13.

**Appellate Division of the Supreme Court of New York, First Department.**

Decided June 28, 2016.

Order, Supreme Court, New York County (Kelly O'Neill Levy, J.), entered July 22, 2015, which, insofar appealed from as limited by the briefs, granted defendants' motion to dismiss the amended complaint and denied relator Thomas C. Willcox's motion for leave to file a third amended complaint, unanimously affirmed, without costs.

Concur — Sweeny, J.P., Acosta, Feinman, Kapnick and Webber, JJ.

As relator basically concedes on appeal, the claims pled in his amended complaint were time-barred. Hence, the real issue is whether the court properly denied his motion for leave to file a third amended complaint.

623 While leave to amend should be freely given (*see e.g.* McGhee *623 v Odell, 96 AD3d 449, 450 [1st Dept 2012]), "a court must examine the merit of the proposed amendment in order to conserve judicial resources" (*360 W. 11th LLC v ACG Credit Co. II, LLC, 90 AD3d 552, 553* [1st Dept 2011]). Relator fails to state a claim for violation of State Finance Law § 189 (1) (g).[1] His theory — that *if* defendants' alleged underreporting of their income in 1999 created a deficiency that carried over into subsequent years, their New York state corporate franchise tax returns filed between January 2002 and January 2013 constituted false claims under the doctrine of implied false certification — is speculative. A complaint is properly dismissed if it is "based on pure speculation" (*HT Capital Advisors v Optical*

Law Office of
Thomas C. Willcox

# 32 Willcox II, Page 2

124090, *19 [SD NY, Sept. 16, 2015, No. 12 Civ 5089(GBD)] ["speculative general assertion" not enough for False Claims Act]; *Ebeid ex rel. U.S. v Lungwitz*, 616 F3d 993, 999 [9th Cir 2010] [relator must "supply reasonable indicia that false claims were actually submitted"], *cert denied* 562 US 1102 [2010]).[2] Furthermore, "the implied certification theory of liability should not be applied expansively" (*United States ex rel. Wilkins v United Health Group, Inc.*, 659 F3d 295, 307 [3d Cir 2011]; *see also Mikes v Straus*, 274 F3d 687, 699 [2d Cir 2001]), and State Finance Law § 189 (1) (g) requires the "false record or statement" to be "*material* to [the] obligation to pay ... money ... to the state ... government" (emphasis added).

1 On appeal, he does not contest the motion court's rulings regarding conspiracy; therefore, we need not examine his cause of action for violation of section 189 (1) (c).

2 "The [New York False Claims Act] follows the federal False Claims Act... and therefore it is appropriate to look toward federal law when interpreting the New York act" (*State of New York ex rel. Seiden v Utica First Ins. Co.*, 96 AD3d 67, 71 [1st Dept 2012], *lv denied* 19 NY3d 810 [2012]).





Law Office of
**Thomas C. Willcox**

# 33 Segment 2: Procedure, Sealing, and the Record


- The sealing order and the relator’s obligations during the seal.
- The email record with the NYC Law Department.
- Communications with NYC Attorneys X and Y.
- Denial of the motion to appeal and the path to the Appellate Division.
- Set-up question: what does the procedural record reveal about the parties’ choices?

Law Office of
**Thomas C. Willcox**

# 34 Sealing Order, Page 1

At IAS Part 62 of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse at 60 Centre Street, New York, New York on this 23 day of January, ~~2016~~ 20

PRESENT: HON. JAMES E. d'AUGUSTE
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

| | |
|---|---|
| [SEALED],<br><br>Plaintiff,<br><br>- against -<br><br>[SEALED],<br><br>Defendants. | Index No. 100356/2016<br><br>Filed under Seal in Camera Pursuant to NEW YORK FALSE CLAIMS ACT, N.Y. FIN. LAW §190(2)(b) |

**~~[PROPOSED]~~ AMENDED SEALING ORDER**

Upon consideration of the State of New York's Motion for an Amended Sealing Order, dated January 3, 2017, it is hereby ORDERED as follows:

1. The motion is GRANTED;

2. Both (i) the seal imposed by this Court on the file in this action by Order dated March 15, 2016; and (ii) the City of New York's time to make an election and provide notice of such election pursuant to N.Y. State Finance Law § 190(2)(c), are hereby extended until further order of the Court; and

3. The City of New York Law Department shall provide the Court with an under seal, *ex parte* report describing the status of its investigation of the matters raised in the *qui tam* complaint at six (6) month intervals from the date of this Amended Sealing Order until such time

Law Office of
**Thomas C. Willcox**

# 35 Sealing Order page 2

as the Court shall order that the seal be lifted and the government's time to make an election pursuant to N.Y. State Finance Law §190(2)(c) be terminated; and

4. Absent further order of the Court, the County Clerk shall not enter the Complaint or any other document in any electronic case filing system, and shall deny access to the Complaint and other documents filed with the Court in this action to anyone except for the City of New York Law Department, the Office of the New York Attorney General, and any agents thereof designated in writing by counsel.

5. Ordered that a copy of this order be served upon the relator, or counsel within ten (10) days of the date of signing of this order.

ENTER

J.S.C.

HON. JAMES E. d'AUGUSTE

Index No. 150356/2016

FILED

JAN 23 2017

NEW YORK COUNTY
COUNTY CLERK

Law Office of
**Thomas C. Willcox**

# 36 Emails with NYC Law Department

Contents


Page Left Intentionally Blank ........ 1
Amended Sealing order, January 23rd 2017 ........ 2
February 8 2017 email ........ 4
2/28/2017 – Scheduling Emails ........ 6
3-14-17 – Scheduling Emails ........ 7
3-22-17 Letter to RAY ........ 8
5/10/17 – Scheduling Emails ........ 10
5-18-17 Scheduling Emails ........ 11
Page left blank intentionally ........ 12
5-22-17 EIN Transmission ........ 13
7-3-17 Transmission of Names of Defendants ........ 14
Page Left Intentionally Blank ........ 15
10-17-17 Request for status report and 10-17 Followup ........ 16
Page Left Intentionally Blank ........ 17
1-05-18 Call to Atty X and Response ........ 18
1-18-18 – Email re report to court ........ 19
1-18-18 Proposed 10:30 call ........ 20
1-19-18 Email to third lawyer ........ 21
1-29-18 Email to Atty X re EINs ........ 22
2-9-18 transmit 2-8-18 Memo ........ 23
2-12-18 Email Requesting confirmation ........ 24
3-19-18 Prevagen Case Transmittal ........ 25
3-21-18 Email to self re getting case going ........ 26
3-27-18- Email re Berick ........ 27
4-2-18 Email to Berick ........ 28
4-11-18 City Reserves All Rights ........ 31
5-15-18- Letter to Atty X re OOW ........ 32
5-24-18 Scheduling Email ........ 33
6-4-18 OOW Email ........ 34


Law Office of
Thomas C.
Willcox

# 37 Emails with NYC Law Department

ii – **NEW YORK CITY APPENDIX**


7-3-18 Holiday Schedule .......... 35

7-5-18 Transmittal of email and phone history .......... 37

7-15-18 Transmittal Email .......... 37

7-15-18 Letter to Atty X .......... 38

7-18-18 Email to RAY re SOL .......... 42

7-19-18 and 7-23-22 transmittals .......... 43

7-23-18 Atty X email re fraudulent intent .......... 44

8-18-03 Email Transmitting Research .......... 45

8-13-18 email re unopened emasil and 9-10 scheduling .......... 46

9-11-18- Trump investigation email .......... 47

11-12-18 Check for movement and response .......... 48

1-2-19 to 1-10 19 Scheduling emails .......... 49

5-15-19 Transmittal of Refund Policy Documents .......... 54

Holiday Weekend email .......... 55

Illinois Tax Refund Letter .......... 56

6-5-19 Atty X NEF Transmission .......... 58

6-7-19 Relator Response .......... 59

6-26-19 Final Refund Policy Email .......... 60

9-25-19 Unsealing Order emails .......... 61

9-26 19 Attt X email re caption Amendment .......... 62

12-28-19 Personal email sent in error to Atty X .......... 63

11-12-19 Last Email from Atty X .......... 64

2-27-20 Email to Atty X re filing .......... 65

6-15-21 Dismissal .......... 70

12-10-21 Emails to Atty X returned undeliverable .......... 72

12-10-21 Attempt to email D lawless .......... 74

Google drive screen shot showing 8-3-18 transmission to Atty X never opened .......... 75

Penalty and Interest Calculator .......... 76


Law Office of
**Thomas C. Willcox**

# 38 NYC Attorney Y Letter, First Page

LAW FIRM


## Thomas C. Willcox, Attorney at Law

1701 16th Street, N.W, Suite 211, Washington, DC 20009, 202.239.2762 m 202.617.4210
Thomaswillcox@willcoxlaw.com.co, https://willcoxlawusa.attorney/


February 27, 2023

VIA EMAIL: GRUBIN@LAW.NYC.GOV

Gail Rubin
Chief, Affirmative Litigation Section
New York City Law Department
100 Church Street
New York, NY 10007

RE: *State of New York for the City of New York ex rel Thomas C. Willcox v. Credit Suisse (USA) LLC et al.* , 100335/2016, on appeal, 2022-03942

Dear Ms. Rubin:

Set forth below is a detailed letter containing a recommendation for the above-referenced case. Due to the complexity, a table of contents precedes the substance.

Law Office of
Thomas C.
Willcox

# 39 Letter to Attorney Y, Table of Contents

Contents


SUMMARY .... 3

FACTS .... 4

I. Background Facts .... 4

A. The PSINet Litigation .... 4

B. Relator's Efforts to Report the Tax Fraud Allegations to the IRS .... 5

C. The Duties and Options Faced by Atty X As Of the Issuance of the January 23rd, 2017, Order .... 8

D. Communications Prior to July 23rd, 2017, Status Report .... 9

E. Communications Prior to the January 23rd, 2018, Status Report .... 10

F. Communications Prior to the July 23rd 2018 Status Report .... 10

G. Communications Prior to the January 23rd, 2019, Notice of Declination .... 12

H. Communications after the January 23rd, 2019, Notice of Declination By The City... 13

ANALYSIS .... 15

I. The City, through Atty X, took the approach of trying to wear down the Relator by dragging on its "investigation", having determined from the beginning it had no intention of intervening in the case. .... 15

II. Had the City intervened in the case, the Relator would prevailed as the Defendant have been able to invoke the collateral estoppel and/or res judicata arguments', the defenses on which the Defendants relied. .... 17

III. The City Has Demonstrated Irreparable Prejudice To the Relator's Case And Should Be Disqualified From Making Any Future Decisions With Regard to It. The New York City Law Department Should Make All Future Relevant Decisions .... 18

IV. The City Should Obtain the IRS File. .... 18

# 40 NYC's Non-Response



Gmail **Thomas Willcox <thomaswillcox@willcoxlaw.com.co>**

**RE: [EXTERNAL] Denial of Motion for leave to appeal - NYSCEF Alert: Appellate Division - 1st Dept - Civil Action - General - Entry of Order/Judgment 2021-03942 (The State of New York, for the City of New York et al v. Credit Suisse Securities (USA) LLC, a**

**Rubin, Gail (Law)** <grubin@law.nyc.gov> Wed, Apr 19, 2023 at 10:43 AM
To: Thomas Willcox <thomaswillcox@willcoxlaw.com.co>

Mr. Willcox – we will responding to your letter shortly.

---

**From:** Thomas Willcox <thomaswillcox@willcoxlaw.com.co>
**Sent:** Thursday, March 30, 2023 11:39 AM
**To:** Rubin, Gail (Law) <grubin@law.nyc.gov>
**Subject:** [EXTERNAL] Denial of Motion for leave to appeal - NYSCEF Alert: Appellate Division - 1st Dept - Civil Action - General - Entry of Order/Judgment 2021-03942 (The State of New York, for the City of New York et al v. Credit Suisse Securities (USA) LLC, as...

You don't often get email from thomaswillcox@willcoxlaw.com.co. Learn why this is important

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Forward suspect email to phish@oti.nyc.gov as an attachment (Click the More button, then forward as attachment).

Ms. Rubin,

The attached was handed down today.

Will I be getting any response to my letter of last month?

Thanks for your attention to this matter.

Thomas C. Willcox, Attorney at Law

1701 16th Street, NW, 211

Washington DC 20009

202.239.2762

Fax 202 234.0892

Law Office of
**Thomas C. Willcox**

# 41 Segment 3: Doctrine and Ethics


- PSINet tax doctrines: assignment of income, sourcing, federal-NY interplay.
- Preclusion and reverse false claims.
- Ethics for government lawyers and relator's counsel.
- Three hypotheticals: Attorney X, relator's counsel, an Appellate Division judge.
- Guiding question: what should have been done differently?

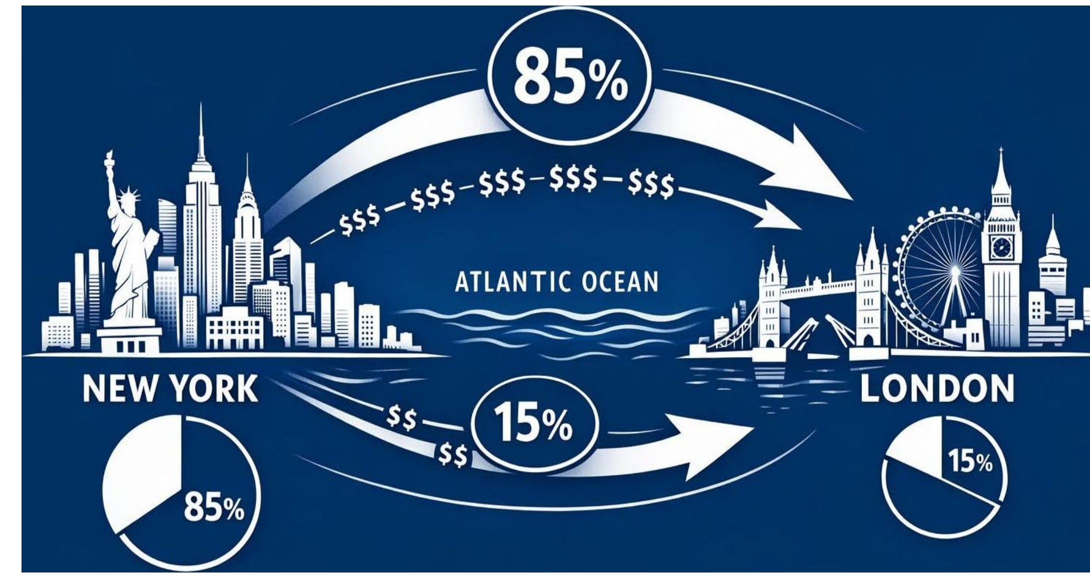
Law Office of
Thomas C.
Willcox

# 42 Doctrinal Structure of the PSINet Transactions


- **Assignment-of-Income Doctrine:** Income is taxed to the person who earns and controls it, not whoever is named on the check; U.S. principals cannot reroute fees abroad through a foreign affiliate.
- **Source-of-Services Rule (Section 861):** Services income is sourced where performed; underwriting, book-running, and allocation in New York generate U.S.-source fees.
- **Avi-Yonah Opinion:** PSINet was "crudely structured" so New York principals did 85% of the work while U.K. affiliates handled 15% and served as "initial purchasers" to shift the fee base offshore.
- **Federal-to-NYC Spillover:** City franchise tax tracks federal taxable income with adjustments; an IRS recovery binds defendants to corresponding State and City liability - the core of Willcox II.
- **Reverse False Claims (NY FCA):** A refund claim or carryforward request that hides an underlying deficiency can be an "implied false" under Escobar; the live fight is materiality and scienter.
- **Bottom Line:** The doctrine exists - the open question is whether courts and government lawyers will deploy it against large financial institutions and cross-border structures.

Law Office of
**Thomas C. Willcox**

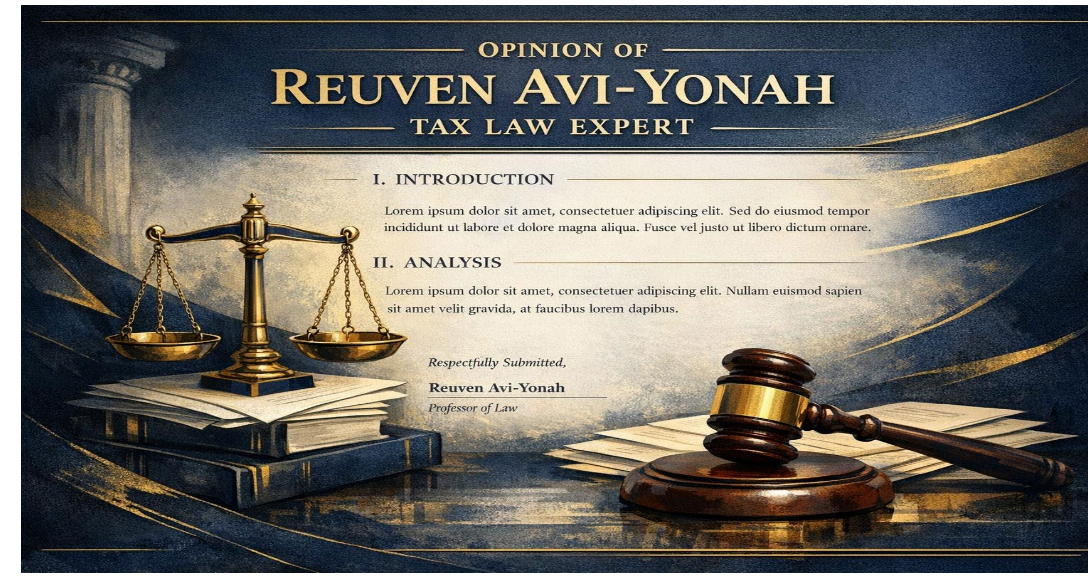
# 43 The 85/15 Routing of PSINet Fees




- **Step 1 - Work Performed in New York (85%):** U.S. principals run the book, meet investors, allocate bonds, and execute the placement on New York desks.
- **Step 2 - U.K. Affiliates as "Initial Purchasers" (15%):** U.K. affiliates handle a thin slice of overseas fundraising but are labeled the contractual principals across the whole deal.
- **Step 3 - Funds Collected in New York:** Investor proceeds flow into New York-based accounts of the U.S. broker-dealer at closing.
- **Step 4 - Wire to U.K. for Lower-Rate Taxation:** Fee income is then wired to the U.K. affiliate and booked there - capturing the rate differential the structure was designed to exploit.
- **Tax Consequence:** Under assignment-of-income and Section 861, the U.S.-performed 85% should have been U.S.-source income on U.S. returns - and, by extension, on New York City franchise tax returns.

Law Office of
**Thomas C. Willcox**

# 44 Avi-Yonah Opinion and Its Evidentiary Weight




- ***"Crudely structured so that the true principals in New York would do 85% of the work, and use their UK affiliates to do 15% of the fundraising overseas, but be the 'initial purchasers' for the whole deal, so that the funds collected in New York City would be wired to the UK for taxation at a lower rate."*** - Reuven Avi-Yonah
- **Who He Is:** One of the most cited U.S. international-tax academics; courts treat his characterizations of cross-border structures as persuasive expert testimony.
- **What the Opinion Does:** Frames the U.K. routing as form-over-substance and ties it directly to assignment-of-income and Section 861 sourcing - converting a fact pattern into a doctrinal narrative.
- **Why It Matters in Willcox II:** The opinion was not part of the PSINet I/II record - it is "new evidence" that complicates the defendants' collateral estoppel argument.
- **Tax Recovery Link:** Avi-Yonah opines that an IRS recovery driven by the relator's reporting would bind defendants to corresponding State and City liability - not by res judicata, but by acceptance of the U.S.-source position.
- **Evidentiary Weight:** Not preclusive on its own, but powerful at motion-to-dismiss and summary-judgment stages where the question is whether a reasonable factfinder could find tax fraud.

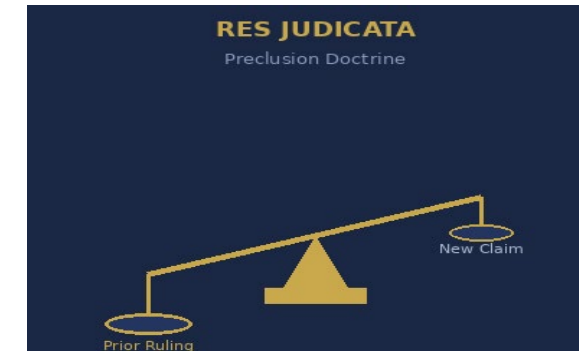
Law Office of
**Thomas C. Willcox**

# 45 Escobar: Materiality and Scienter Today


- **Escobar's Core Holding:** Implied certification is real - a claim can be false when the claimant omits material information that makes other representations misleading.
- **Application to Reverse FCA:** A taxpayer with a preexisting deficiency who files for refund or carryforward, without disclosing that deficiency, can trigger reverse FCA liability under New York's statute.
- **Materiality - the Modern Battleground:** Escobar requires a "demanding" materiality showing; relators must show the government would actually care about the omission - government inaction post-disclosure cuts strongly against materiality.
- **Scienter - Knowing or Reckless:** Post-SuperValu, ambiguity in the law is not a safe harbor; subjective belief matters and internal documents driving the U.K. routing can supply the knowledge element.
- **What This Means for Willcox:** The First Department's earlier skepticism of "implied false" theories is harder to sustain after Escobar; the question is now factual - was the misstatement material and was it made knowingly?
- **Doctrinal Takeaway:** The legal framework supports the theory; the case turns on evidence of what defendants knew about the U.S. sourcing of their fees and whether City franchise tax authorities relied on the omission.

Law Office of
**Thomas C. Willcox**

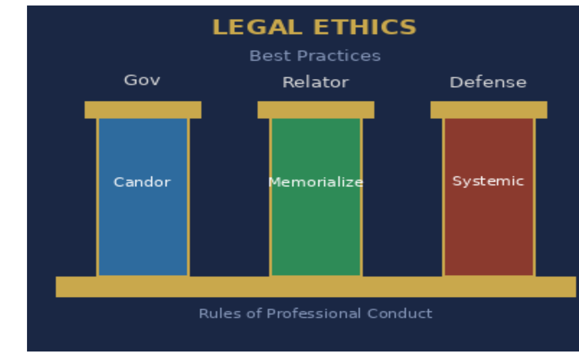
# 46 Preclusion: Res Judicata and Collateral Estoppel




- **PSINet I and II Framing:** Judge Daniels rejected the usurious-brokerage theory under GOL section 5-531, holding the deals were "nothing more than a common securities underwriting" - not disguised loans.
- **U.K. Entities as Initial Purchasers:** Both Judge Daniels and the Second Circuit treated the U.K. affiliates as principals and the U.S. entities as their agents, citing the purchase agreements as evidence of "a common sale of debt securities between two principals."
- **Defendants' Preclusion Argument:** In Willcox I and (to a lesser extent) Willcox II, defendants invoked those rulings as collateral estoppel - "you cannot relitigate principal/agent status under a different statute."
- **Counterarguments:** Different causes of action, different sovereign (the City was not a party to PSINet I or II), and a richer record - including the Avi-Yonah opinion - not before the federal courts the first time around.
- **Framing Drives the Outcome:** If the "issue" is principal/agent status, preclusion bites hard; if reframed as whether the banks underpaid NYC franchise tax by assigning U.S.-earned fees to U.K. affiliates, the earlier rulings carry far less weight.
- **The Human Factor:** Once a court has written the "standard under narrative, it is psychologically hard to embrace a competing "tax-a scheme" narrative - a recurring obstacle in whistleblower cases th earlier litigation.

Law Office of
Thomas C.
Willcox

# 47 Ethics and Best Practices




- **Government Lawyers - Honest Status Reports:** Court-ordered status filings must be accurate and not materially misleading; if the office is not really investigating, do not use the language of ongoing investigation.
- **Government Lawyers - Candor With the Relator:** Telling a relator "still reviewing" year after year while doing little - and then declining after years under seal - is politically tempting but ethically problematic; early non-intervention should be communicated promptly.
- **Relator's Counsel - Memorialize and Push:** Document every material communication, hand the government concrete deliverables (EINs, refund-policy memos, expert opinions), and follow up in writing.
- **Relator's Counsel - Use the Court:** At appropriate moments, ask the court to enforce deadlines on the election decision or to require more detailed status updates.
- **Defense Counsel - Systemic Stakes:** Preclusion and declination are legitimate tools, but a bar that tolerates cosmetic investigations invites statutory reform - broader relator discovery under seal or weakened preclusion doctrines.
- **Transition:** With this backdrop, we move to the three hypothetica
by questions tailored to our mixed New York audience.

Law Office of
**Thomas C. Willcox**

# 48 Hypothetical: You Are Attorney X


- You are assigned to a sealed NYC False Claims Act matter referred to the Law Department.
- Relator's counsel emails repeatedly about scheduling, transmission of names of defendants, and IRS file access.
- How do you balance the court's sealing order with the relator's procedural rights?
- What internal facts would trigger your recommendation that the City supersede, decline, or seek to dismiss?
- Identify the ethical limits on communication while the complaint remains under seal.

# 49 Hypothetical: You Are Relator's Counsel

- Your qui tam complaint has been under seal since filing, and the City has not yet decided to supersede or decline.
- Emails to the NYC Law Department go unanswered for months at a stretch.
- Draft a strategy for moving the court to extend, modify, or partially lift the sealing order.
- How do you preserve the appellate record and toll deadlines while honoring the seal?
- What duties do you owe the relator, the court, and the public interest in the interim?

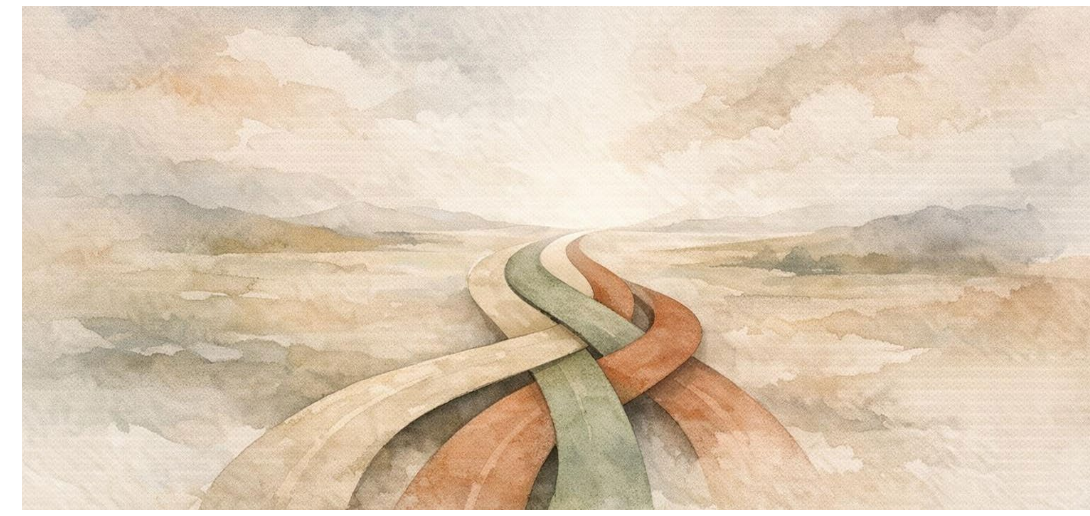
Law Office of
**Thomas C. Willcox**

# 50 Hypothetical: You Are an Appellate Division Judge

- A qui tam relator appeals the denial of leave to amend after the City declined to intervene.
- The relator argues procedural prejudice from prolonged sealing and limited access to the IRS file.
- Articulate the standard of review for denial of leave to amend under CPLR 3025(b).
- What weight do you give scholarly authority such as Professor Avi Yonah's opinion on the tax fraud statute of limitations?
- Where do you draw the line between trial-court deference and qui tam public-interest review?

Law Office of
**Thomas C. Willcox**

# 51 Wrap-Up: Tying the Three Segments Together



**Facts, procedure, and doctrine converge on one question: where would you have moved earlier, or differently?**

Law Office of
**Thomas C. Willcox**

# 52 Questions and Discussion

## Questions and Discussion

The floor is open.

Law Office of
**Thomas C. Willcox**

## Contents


1. [Slide 1 – Title] PPt ........ 3
2. [Slide – Learning objectives]- PPT ........ 3
3. Slide – Factual background: PSINet deals ........ 4
4. [ PSINet fundraising chart (1998–2000) ........ 7
5. ........ 8
6. ........ 8
7. ........ 8
8. ........ 9
9. ........ 9
10. ........ 9
11. ........ 9
12. ] ........ **Error! Bookmark not defined.**
13. [Slide – Segment 1: The transaction and the Tax Posture ........ 9
14. Offering Memorandum covers: PSINet I front] ........ 10
15. PSINet I back ........ 10
16. PSINet II _ front cover ........ 11
17. Offering Memorandum covers: PSINet II rear] ........ 11
18. [Slide – Cross-receipts: "Initial Purchasers" F-1] ........ 12
19. Exhibit F-2—another cross-receipt prepared for execution by PSINet itself—A280 ........ 12
20. PSINet II Cross Receipt – F3 ........ 13
21. – Comfort-letter requests: U.S. dealers as "initial purchaser" ........ 13
22. Slide – Agreement Among Initial Purchasers (AAIP)- Front page ........ 14
23. Merrill Lynch ........ 15
24. Morgan Stanley ........ 15
25. Bears Stearns Signature page for AAIP ........ 15
26. Slide Comparables: Azurix ........ 16
27. Versatel ........ 17
28. OOW Letter ........ 20
29. Overview of the New York False Claims Act and Tax Amendments ........ 21
30. "Statute of limitations: Relator vs State/City"- SOL Sheet ........ 26
31. RAY Opinion ........ 30
32. First Page of Willcox I ........ 30

33. Second Page of Willcox I....................31
34. So, to tie this back to the PSINet/Willcox story: ....................32
35. Sealing Order page 1 ....................33
36. Sealing Order page 2....................34
37. [Slide – List of Emails: documenting the "investigation"] – how many pages....................35
38. – Emails, page 2 ....................38
39. M y characterization in the NYC Attorney Y letter] – first page ....................38
40. Letter to Attorney Y- Table of Contents....................38
41. [Slide – NYC's non-response]....................39
42. [Segment transition – toward doctrine and ethics] ....................41
43. [Slide – Tax doctrines and the IRS file] ....................42
44. [Slide – Preclusion and prior PSINet rulings] ....................44
45. [Slide – Ethics and best practices, text needs to be inserted ....................46
46. Hypo 1 title] ....................46
47. [Slide – Hypo 2 title]....................48
48. [Slide – Hypo 3 title]....................49
49. [Slide 16 – Closing ethics points] ....................51

1. [Slide 1 – Title] PPt

Good [morning/afternoon], everyone. My name is Thomas Willcox, and today we're going to look at whistleblowing, tax fraud, and government gatekeeping through a very concrete case study: the PSINet transactions and the ensuing litigation in New York and federal courts.

This is not a theoretical presentation. I was the Relator. I litigated these issues. I dealt with the IRS, with New York State, and with New York City. I dealt with promises from government lawyers and oversight officials that were never kept. So, what I want to give you is not only doctrine, but a realistic sense of how these cases can play out for everyone involved—relators, defense counsel, and government lawyers.

2. [Slide  – Learning objectives]- PPT

Let me start by setting out what I hope you'll take away from the next hour.

First, I want you to be able to spot the red flags that an FCA-style tax "investigation" is merely cosmetic—when government counsel is, frankly, going through the motions under seal, and what that means for your strategy if you're on the relator side or the defense side.

Second, I want you to see how deal documents—offering memoranda, closing memos, cross-receipts, and agreements among initial purchasers—can be used to build a serious economic-substance and tax-fraud argument, even when the formal labels in the main contracts point in the opposite direction.

And third, I want to talk about how to handle prior adverse rulings and reluctant government counsel in whistleblower cases. In other words, what do you do when the courts think they've already "seen" your fact pattern, and the government custodian of your case really doesn't want to move it forward?

We'll focus on New York practice. Many of the issues arise under the New York False Claims Act, the New York City corporate franchise tax, and New York preclusion law.

### 3. Slide – Factual background: PSINet deals

Let me walk you into the factual background so we're all on the same page.

In 1999, a telecommunications company called PSINet issued two large private placements of debt securities—what I'll refer to as PSINet I and PSINet II. These were international 144A/Regulation S deals. The banks closed 85% of the deal in New York City, and 15% in London, England. The banks involved earned a total of about forty-six and a half million dollars in fees on the New York City portion.

Now, when I say "the banks," I mean global institutions you all know. The core point, from a tax perspective, is this: roughly eighty-five percent of those fees were in substance earned in the United States by U.S. broker-dealer affiliates. The

U.S. teams marketed to U.S. institutional investors, took the orders, ran the books, and closed the deals in New York.

But the transactions were structured so that those U.S. affiliates were not the formal “initial purchasers” in the documents. Instead, the U.K. affiliates of those banks—Donaldson, Lufkin & Jenrette International, Bear Stearns International, Merrill Lynch International, Morgan Stanley International—were designated as the Initial Purchasers in the purchase agreements, at least in theory.

What happened at closing is that the investors’ money flowed into New York, to the U.S. broker-dealers, and then, after netting out, the fee earned in the US was wired to the U.K. affiliates, who booked the underwriting spread and paid tax in the U.K., which had a lower corporate tax rate at the time. Even further, England has only a national, and no state tax. So you have eighty-five percent of the economic work and the securities placement in the U.S., but the fee income is claimed in London, at a substantially lower marginal tax rate.

I discovered this structure in 2001–2002 in the course of unrelated litigation, by digging into the PSINet record. In 2005, I tried to report the tax fraud to the IRS. At that time, there was no formal IRS Whistleblower Office. I submitted a detailed Recommendation to the IRS laying out the facts and the tax theory. I believe the IRS obtained some sort of recovery, but ultimately, I was denied an award on what I view as a technical ground, and then the IRS took refuge in confidentiality rules under section 6103 and the absence of Tax Court review rights for pre-2006 claims.

Fast-forward to 2011. New York State amends its False Claims Act to cover certain tax cases. I file a qui tam on behalf of the State of New York. At that time, I did not even realize New York City had its own corporate franchise tax that mirrored the State's in important ways. That first state case—what I call Willcox I—was dismissed. The trial court and then the First Department thought the claims were speculative, and they were very skeptical of applying a reverse-false-claims theory to alleged underpayment of tax.

In 2016, two important things happen. First, I found an international tax expert—Reuven Avi-Yonah, a University of Michigan international tax professor—who reviewed the PSINet record and wrote a detailed opinion letter concluding that the transactions were structured to evade U.S., New York State, and New York City taxes, and that the IRS file would be a critical piece of evidence. Second, I realize for the first time that New York City itself has a corporate franchise tax that would have been affected by this income shifting. So I file a second case—this time on behalf of the City—raising essentially the same core facts but directed to the City's tax base.

That second case, Willcox II, is the one in which the City of New York formally takes control in early 2017 and, in my view, handles the matter in a way that makes the FCA framework itself important to understanding what followed: the City controlled the sealed investigation, the reverse-false-claims theory shaped how the allegations fit within the relator's 10-year limitations period, and the City and State still retained the ability to pursue direct tax-fraud theories of their own. We'll return to that in the second segment, when we talk about gatekeeping, the FCA process, and the difference between relator claims and direct sovereign tax claims.

For now, I want to stay at the transaction level and show you what the documents actually say.

4. [ PSINet fundraising chart (1998–2000)

Before we look at specific documents, consider the overall pattern of PSINet's capital-raising from 1998 to 2000. As part of its motion to remand in the PSINet federal case, PSINet included a chart—describing five fundraising transactions over that period.

Here's what that chart shows, and I'll summarize the key points. From 1998 through 2000, DLJ in New York—the U.S. investment bank—is PSINet's primary banker for four out of five major transactions. DLJ is the lead firm in four syndicates. There is no record of PSINet doing business with these U.K. affiliates before 1999.

Only in 1999, for these two PSINet placements, does PSINet switch to using the U.K. affiliates—DLJI and the rest—as the nominal Initial Purchasers. Even then, the U.K. affiliates place only about twelve-and-a-half percent and twenty percent of the respective transactions, while DLJ and the other U.S. affiliates place the bulk of the debt in the U.S. Then, in 2000, PSINet goes right back to DLJ U.S. as its lead manager.

Even without going deeply into transfer-pricing mechanics here, this chart is telling you something important: before and after the two suspect transactions, PSINet uses U.S. bankers to raise U.S. dollar debt, and those U.S. bankers book the income. Only in the year in which they construct this U.S.-work/U.K.-booking structure does PSINet suddenly elevate U.K. affiliates to "Initial Purchaser" status.

The following slides explore the implications of this chart in more detail.

### 5. PSINet 1999 Tax Fraud: Transaction Flow & Tax Analysi

The 1999 PSINet transactions raised $1.8 billion across two private placements—PSINet I (July 1999) and PSINet II (November 1999). The banks involved earned approximately $46.56 million in underwriting fees on the U.S. portion—a 2.75% spread. Rather than booking those fees in New York, the fees were rerouted to London affiliates. The result: New York State and New York City together lost an estimated $10.7 million in unpaid banking corporation taxes (NYS 9% + NYC 9% = 18%). With 25+ years of penalties and compound interest, the estimated total liability is approximately $85.3 million—roughly 11× the original principal tax gap.

### 6. PSINet Fundraising Pattern: 1998–2000

In 1998, PSINet used U.S. entities (DLJ Securities Corp.) as lead underwriter—fees were booked in New York, subject to the full 53% combined rate (US 35% + NYS 9% + NYC 9%). In 1999—and only 1999—PSINet switched to U.K. affiliates (DLJI, Merrill Lynch International, Morgan Stanley International, Bear Stearns International) as nominal "Initial Purchasers," rerouting $46.56 million in fees to London under a 30% UK-only rate while avoiding all New York taxes. By 2000, PSINet reverted entirely to U.S. entities, and the U.K. affiliates disappeared from the structure. The anomaly is confined to a single year, which is strong circumstantial evidence of tax motivation.

### 7. 1998 & 2000: Normal Transaction Flow

Under the normal structure, U.S. investors delivered capital to U.S. banks in New York. Those banks forwarded capital plus a 2.75% fee to PSINet. The fee income remained in the United States and was fully taxed: U.S. federal corporate tax at 35% ($16,296,000), NY State banking corporation tax at 9% ($4,190,400), and NYC banking corporation tax at 9% ($4,190,400)—a combined effective rate of 53% on the fee income, totaling $24,676,800.

### 8. 1999: Anomalous Flow — Offshore Tax Avoidance

In 1999, U.S. affiliates were relabeled as mere "agents" while U.K. affiliates were inserted as nominal "Initial Purchasers." U.S. investors still delivered capital to New York—but the $46.56 million in fees were wired across the Atlantic to London affiliates and taxed only at the UK's 30% rate. Because the closing occurred simultaneously, the U.K. entities bore zero market risk. The result: NYS 9% and NYC 9%—totaling $10,708,800 in New York taxes—were never paid. The U.S. affiliates' names, not the U.K. affiliates', appeared on the offering memorandum covers seen by investors.

### 9. Transaction Structure: 1998–2000 Comparison

Side-by-side, the differences are stark. In 1998 and 2000, DLJ Securities Corp. (U.S.) was the lead, fees went to New York, and the effective tax rate was 53%. In 1999, U.K. affiliates were labeled "Initial Purchasers," U.S. affiliates were demoted to "agents," fees of $46.56 million went to London, and only the 30% UK rate applied—with zero New York State or City tax. Capital raised also jumped dramatically: from roughly $400 million in normal years to $1.8 billion across the two 1999 deals. The U.K. affiliates assumed no market risk because of the simultaneous closing structure.

### 10. Tax Liability: Should Have Paid vs. Actually Paid

Side-by-side, the differences are stark. In 1998 and 2000, DLJ Securities Corp. (U.S.) was the lead, fees went to New York, and the effective tax rate was 53%. In 1999, U.K. affiliates were labeled "Initial Purchasers," U.S. affiliates were demoted to "agents," fees of $46.56 million went to London, and only the 30% UK rate applied—with zero New York State or City tax. Capital raised also jumped dramatically: from roughly $400 million in normal years to $1.8 billion across the two 1999 deals. The U.K. affiliates assumed no market risk because of the simultaneous closing structure.

### 11. Tax Gap & Estimated Liability with Penalties

Applied to $46,560,000 in fees: under proper U.S. routing, the banks should have paid US federal corporate tax (35%) of $16,296,000; NY State banking corporation tax (9%) of $4,190,400; and NYC banking corporation tax (9%) of $4,190,400—a total of $24,676,800 at a 53% combined rate. What they actually paid under the U.K. routing was only UK corporation tax (30%) of $13,968,000, with zero subnational or city-level tax. The New York tax gap: $8,380,800 ($4,190,400 to NYS + $4,190,400 to NYC).

### 12. [Slide – Segment 1: The transaction and the Tax Posture

This slide marks the beginning of Segment 1, where I want to stay tightly focused on the transaction itself and the tax posture it created. The central question is not whether one can invent a theory after the fact; it is what the contemporaneous documents show about who did the work, who faced the market, who booked the income, and why that mattered for federal, State, and City tax purposes.

As you'll see, the PSINet I and II offering memoranda put the U.S. affiliates front and center in the eyes of investors, while other closing documents repeatedly describe those same U.S. affiliates as initial purchasers. That documentary record is what raised the assignment-of-income and sourcing issues, and it is also what led me first to report the matter to the IRS and later to view the case as one that could fit within the New York False Claims Act framework. So the set-up question for this segment is simple: when we put the formal labels aside and read the documents as a whole, what do they actually show?

### 13. Offering Memorandum covers: PSINet I front]

Now let's look at the front and back covers of the PSINet offering memoranda, because they tell a very different story from the purchase agreements.

In PSINet I, the offering memorandum referred to in the purchase agreement has on its front and back covers the following: "PSINet 1,050,000,000 11% Senior Notes due 2009 and E150,000,000 11% Senior Notes due 2009." It was a combined document used for both the dollar and Euro tranches.

### 14. PSINet I back

Crucially, that same front and back cover list only the names of the PSINet I U.S. placement agents—DLJ, Bear Stearns & Co. Inc., and Chase Securities—and those U.S. firms are nowhere identified on the covers as mere agents of the U.K. Initial Purchasers.

So, imagine yourself as an institutional investor in 1999. You are handed an offering memorandum. On the front page, you see PSINet, the size of the notes, and the names of the U.S. banks. You do not see the names of DLJI, Bear Stearns International, or Chase Manhattan International. There is no hint that the U.S. firms are acting as agents for some London affiliate. To the investor, the U.S. broker-dealers are the face of the transaction.

15. PSINet II _ front cover

PSINet II looks the same way. The PSINet II offering memorandum, dated November 24, 1999, has on its front and back covers "PSINet 600,000,000 10% Senior Notes due 2006 and 150,000,000 10¼% Senior Notes due 2006." Again, that document is used for both the dollar and Euro tranches.

16. Offering Memorandum covers: PSINet II rear]

And again, the front and back covers list the names of the U.S. placement agents—DLJ Securities Corp., Bear Stearns & Co. Inc., Merrill Lynch Pierce Fenner & Smith, Morgan Stanley & Co. Inc.—with no indication on those covers that they are acting as mere agents of the U.K. Initial Purchasers.

So, to recap: the purchase agreements define the U.K. entities as "Initial Purchasers." But the documents that investors actually see—the covers of the offering memoranda—feature only the U.S. broker-dealer names. That's a classic divergence between formal labels and economic reality.

17. [Slide – Cross-receipts: "Initial Purchasers" F-1]

Next, let's talk about the closing documentation, and in particular the cross-receipts.

The PSINet I Closing Memorandum has a section describing the exchange of cross-receipts at closing. Section J.3 states that "each of the Company and DLJ International, on behalf of the Initial Purchasers, delivered to the other Cross-Receipts in the forms attached hereto as Exhibits F-1, F-2, F-3 and F-4 for the Notes and payment therefor."

Exhibit F-1—the first cross-receipt—is prepared for execution by the PSINet I U.S. placement agents. It is drafted to be signed by Donaldson, Lufkin & Jenrette Securities Corp., Bear Stearns & Co. Inc., and Chase Securities Inc., and it refers to those U.S. affiliates as "the Initial Purchasers." That's at A278.

18. Exhibit F-2—another cross-receipt prepared for execution by PSINet itself—A280

Note that this document also identifies the PSINet I U.S. placement agents as the "Initial Purchasers."

### 19. PSINet II Cross Receipt – F3

In PSINet II, we see the same pattern. A cross-receipt prepared for execution by DLJ Securities Corp.—the U.S. affiliate—again describes that firm as one of the "Initial Purchasers."

But from a tax and economic-substance perspective, the fact that the U.S. broker-dealers are being described as "Initial Purchasers" in cross-receipts prepared for their signature is highly relevant. It tells you how the parties themselves thought about their roles when they weren't trying to fit into the legal definitions in the purchase agreement.

### 20. – Comfort-letter requests: U.S. dealers as "initial purchaser"

The same theme appears in the comfort-letter correspondence with accountants.

In PSINet II, for example, there is a letter dated November 22, 1999, from Colin Knudson, Senior Managing Director of DLJ Securities Corp., to PricewaterhouseCoopers. That letter describes DLJ Securities Corp. as "Initial Purchaser of Dollar and Euro Senior Notes due to be sold by PSINet, Inc." and explains that DLJ, in that capacity, will be reviewing certain information that will be incorporated by reference into the offering memorandum and used by investors in making their investment decisions.

There are three similar letters to PricewaterhouseCoopers on behalf of Morgan Stanley & Co. Inc., Merrill Lynch International, and Bear Stearns & Co., all identifying those firms as "Initial Purchasers."

The same pattern occurs in letters to Arthur Andersen. A November 22, 1999, letter from Knudson to Andersen identifies DLJ Securities Corp. as "an initial purchaser of Dollar and Euro Senior Notes due to be issued by PSINet," and three similar letters identify the other PSINet II U.S. placement agents as Initial Purchasers.

So we now have three layers of documentation saying the U.S. broker-dealers are Initial Purchasers: cross-receipts, comfort-letter requests to PwC, and letters to Arthur Andersen. All of these documents are contemporaneous. None of them were drafted for litigation. They were drafted because accountants needed to know who their client was and what opinion they were being asked to give.

For purposes of economic substance and tax, this is powerful evidence. It's not me saying "the U.S. firms were the real principals." It's the banks' own senior people calling themselves Initial Purchasers.

### 21. Slide – Agreement Among Initial Purchasers (AAIP) - Front page

Now let's turn to the Agreement Among Initial Purchasers—the AAIP—for PSINet II.

Paragraph 1 defines Donaldson, Lufkin & Jenrette International—DLJI—as the lead manager. Paragraph 7 separately defines Donaldson, Lufkin & Jenrette Securities Corporation—DLJ—as its U.S. affiliate.

### 22. Merrill Lynch

The signature pages are where things get interesting. One signature page has a line for a representative of Merrill Lynch & Co.—a U.S. affiliate—and that line is signed by Charles A. Wickham III, who in fact has always been an employee of Merrill Lynchg.  Wickham is also the person who signs the PSINet II Registration Rights Agreement on behalf of Merrill Lynch International Ltd., the U.K. affiliate.

### 23. Morgan Stanley

Another signature page has a line for Morgan Stanley & Co. Inc., and that line is signed by Jeffrey H. Gelles, who also signs the PSINet II Purchase Agreement on behalf of Morgan Stanley & Co. International Ltd., the U.K. affiliate.

### 24. Bears Stearns Signature page for AAIP

A third signature page has a line for Bear Stearns International, and that line is signed by L. Alletto, Senior Managing Director, who is identified elsewhere as a managing director at Bear Stearns & Co. Inc., the U.S. entity,

So, the AAIP—an agreement literally called "Agreement Among Initial Purchasers"—has signature lines for U.S. affiliates and is in fact signed by individuals who wear both U.S. and U.K. hats. This undercuts the story that only the foreign entities are the Initial Purchasers and that the U.S. firms are mere agents.

For present purposes, the key point is narrower: this is the kind of contemporaneous evidence that led Professor Avi-Yonah to conclude that the structure shifted income away from the U.S., New York State, and New York City tax base. I do not need to re-litigate the transfer-pricing mechanics here; it is enough to note that those issues were addressed in his opinion and that the documents are consistent with his conclusion.

### 25. Slide Comparables: Azurix

Let me bring in the comparables now, because they're important when we talk about whether PSINet's structure was "normal" or tax-motivated.

The first comparable is Azurix. In the Azurix transaction, the RRA and related SEC exhibits show that for roughly 340 million in U.S. dollar notes, the Initial Purchasers are DLJ, Chase, Merrill Lynch, and Credit Suisse First Boston Corp—all U.S. entities. For about 360 million in sterling-denominated notes, the Initial Purchasers are DLJI, Chase International, Merrill Lynch International, and CSFB Europe. So the Initial Purchaser label follows the currency and the market in which the funds are raised.

The evidence also indicates that in Azurix, the U.S. intermediaries reported the fee or discount attributable to the dollar notes as their own income. That is, they didn't push it offshore.

### 26. Versatel

The second comparable is Versatel, a Dutch telecom. In Versatel's offerings, the registration statements show that for the U.S. portion of the underwriting—the shares and ADSs offered in the United States and Canada—Lehman Brothers Inc. and other U.S. firms are the underwriters. For the concurrent offering of shares and ADSs outside the United States and Canada, Lehman Brothers International Europe acts as the lead underwriter.

In other words, when Versatel raises money in the U.S. market, U.S. entities are clearly in the lead and are treated as such. When Versatel raises money in Europe, the European affiliate is in the lead.

Both Azurix and Versatel are consistent with a simple principle: the affiliate in the country in whose currency the funds are raised and whose market is being tapped is the appropriate Initial Purchaser and booking entity.

Contrast that with PSINet. In PSINet, the U.S. market is where most of the funds are raised, the U.S. dollar notes are sold predominantly to U.S. institutions, the closings occur in New York, and the U.S. affiliates do the bulk of the work. Yet the Initial Purchaser label and the booking of the spread are assigned to U.K. affiliates.

So when I say the PSINet deals were structured to shift U.S.-source fee income to a lower-tax U.K. jurisdiction, I'm not just relying on a gut feeling. I'm comparing PSINet to other 144A transactions, where the economic origin of the funds and the identity of the book-running dealers line up with the Initial Purchaser label and the booking of the spread. In PSINet, they don't.

So when I say the PSINet deals raised a serious income-shifting issue, I am not relying on intuition. I am comparing PSINet to other 144A transactions, where the market-facing role, the booking entity, and the deal structure line up more naturally. In PSINet, they do not. That is the point the comparables help establish, and it is one reason Professor Avi-Yonah found the tax allegations substantial rather than speculative.

In short, you've seen how the PSINet documents themselves blur the line between "U.K. Initial Purchasers" and "U.S. Initial Purchasers," and how comparable deals like Azurix and Versatel show that this isn't how things normally look when there's no tax motivation.

To sum up: In 2001 and 2002, through the PSINet litigation, I discovered that several Wall Street banks had earned about 46.5 million dollars in fees from the US Portions of the1999 PSINet transactions, and simply had those funds collected at a New York City Closing, but wired to U.K. affiliates and taxed there at lower federal rates, and completely avoiding any local taxes. I concluded that this structure defrauded the federal government and New York of tax on U.S.-source income, and I now refer to this set of issues as the “Tax Fraud Allegations.”

Due to dysfunction in the IRS and no Office of the Whistleblower in existence, it took until 2005 for the IRS to respond to my efforts to report this fraud. I called an IRS agent in New York, and explained the substance of my allegations. He told me he needed to check whether there was already an audit covering these issues, and later confirmed that there was no pre-existing audit. Once he gave me that confirmation, I traveled to New York, met in person with several IRS agents, and provided them with numerous documents supporting the claim.

Despite this, in April 2005 I received a form-style denial letter from the IRS. When I called to follow up, I was asked for “additional information,”which I could only interpret as a need for an international tax expert to opinion on the case. As a result of the subsequent search, I reached a part-time IRS Commissioner, who referred me to a lawyer whom I will refer to as Tax Attorney Y in the IRS’s D.C. International Division. I then prepared and sent him a comprehensive recommendation package that again set out, in detail, my PSINet tax-fraud theory.

In December 2006, Congress created the IRS Whistleblower Office. After learning of this, I contacted the IRS Attorney again. He told me that he had forwarded my materials to the New York IRS office, that the New York agents had "obtained a recovery," but that my claim for a whistleblower reward had been denied on the ground that there had been a pre-existing audit. I knew that explanation could not be accurate, because the IRS Agent with whom I spoke had affirmatively checked and told me there was no pre-existing audit before meeting with me, and the IRS would not have held that meeting if an audit had already been underway.

### 27. OOW Letter

In June 2007, I wrote to the newly installed director of the Whistleblower Office, asking for reconsideration. His response was a vague, conclusory statement that the prior denial had been "well-reasoned," without the straightforward "no recovery" language the IRS typically uses when it denies a claim because it has collected nothing. That combination—Epstein's statement that there had been a recovery, the retroactive invocation of a supposed pre-existing audit, and the OOW's unusually opaque denial—led me to believe that the IRS had, in fact, obtained a recovery on the PSINet-related tax issues and then found a technical excuse to deny me a reward, using confidentiality and the lack of Tax Court review to prevent me from obtaining the IRS file.

Those events form an essential part of the backdrop to the later New York False Claims Act cases. They explain why, in the State and City litigation, I repeatedly emphasized the need to obtain the IRS file and why I believed that file would confirm both the tax fraud itself and the fact that the banks had already paid at least some of the federal tax that should have been reported in the United States and New York City

In the next segment, we'll shift gears. We'll look at what happened after I brought these facts to New York City; how the City's Law Department and its designated attorney, "Atty X," handled the case under seal. NYC Atty X ceased to communicate with me after the court lifted the seal on the case, and, during the appeal, left the employ of NYC without giving me any notification, what I laid out in my 2023 letter to the second NYC lawyer I worked, whom I will call "NYC Atty Y"; and what lessons we can draw about government gatekeeping, sham investigations, and the ethical obligations of public lawyers in this space.

Segment 2 Script – Government Gatekeeping and Sham Investigations

## 28. Overview of the New York False Claims Act and Tax Amendments

Let's turn now from the transactions themselves to what happened when I brought this material to New York City, and what that tells us about government gatekeeping in whistleblower cases.

Before we dive into PSINet and the facts, I want to ground us in the framework we're working under: the New York False Claims Act—Article 13 of the State Finance Law, sections 187 through 194—and, in particular, its tax amendments. This part matters. Even though the appellate court ultimately held that the FCA did not apply to these transactions, you still need to understand the FCA structure, and especially the reverse-false-claims theory, to understand both how my relator claims were framed and how New York City was able to control, and in my view stall, the matter while it remained under seal.

Before we dive into PSINet and the facts, I want to ground us in the framework we're working under: the New York False Claims Act—Article 13 of the State Finance Law, sections 187 through 194—and, in particular, its tax amendments.

Initially, New York's FCA did not cover tax cases. It was like the federal act in that respect: tax controversies were left to the tax authorities and their own statutes. In 2010, the Legislature changed that. It enacted Chapter 379 of the Laws of 2010, which amended section 189 of the State Finance Law to authorize FCA actions alleging tax fraud, but only under specific conditions.

New York's statute is modeled closely on the federal False Claims Act. It allows private relators to bring qui tam suits in the name of the State, and also on behalf of local governments like New York City, to recover money obtained from the government by fraud or false claims. It borrows the core concepts of liability, treble damages, civil penalties, and qui tam procedure from the federal FCA, and then adds some New York-specific twists.

Procedurally, the New York FCA tracks the federal act very closely. A relator who wants to bring a case must:

- File the complaint in the Supreme Court of the State of New York, under seal;
- At the same time, serve the State—typically the Attorney General—with a copy of the complaint and a written disclosure of substantially all material evidence and information they possess.

The statute explicitly provides that the complaint "shall remain under seal for at least sixty days and shall not be served on the defendant until the court so orders." That initial seal is mandatory. It's there so the government can investigate without tipping off the defendant.

The seal, however, is not an information blackout. The law clarifies that the seal does not preclude the Attorney General, a local government, or the relator from sharing the complaint and the supporting disclosure with relevant state or local agencies, or other law enforcement authorities, so that "the actions may be investigated or prosecuted"—subject to the same seal obligations. In other words, while the case is under seal, the government is supposed to be talking to itself—Tax, Finance, City, federal authorities—to figure out what's going on.

The State Finance Law then gives the government a set of options, again modeled on the federal FCA: it can intervene and take over the case; it can decline and let the relator proceed; or it can, in some circumstances, move to dismiss the case over the relator's objection—after giving the relator notice and an opportunity for a hearing.

In my case, because it was brought on behalf of New York City, the court's Amended Sealing Order went a step further. It required the City to file under-seal, ex parte status reports every six months describing the status of its investigation. That is not spelled out in the statute; it was a case-specific mechanism the judge used to ensure that the City's obligations to investigate under the FCA were taken seriously.

Those tax provisions, as they existed when I filed my State and City cases, applied only if:

- The defendant's net income or sales exceeded 1 million dollars in at least one taxable year; and
- The damages pleaded—in terms of unpaid or underpaid tax—exceeded 350,000 dollars.

So this was not about small taxpayers or minor mistakes. It was aimed squarely at significant tax fraud by large taxpayers—exactly the category my PSINet-related allegations fall into.

The Legislature also made clear that local governments could bring actions under the FCA not only on their own behalf but also on behalf of their subdivisions. That opened the door for New York City, through its Law Department, to take over cases like mine and make decisions about whether to intervene or decline.

A few procedural points under the New York FCA are especially relevant to the PSINet/Willcox litigation:

1. Investigation duty and status reports

Once a complaint is filed under seal and the State or a local government is notified, they have an obligation to investigate. The statute doesn't spell out the exact investigative steps, but it contemplates that the Attorney General or local government will review the relator's disclosures, coordinate with relevant agencies, and decide whether to intervene.

In my City case, the court operationalized that by requiring the City to file ex parte status reports at six-month intervals, describing what it was doing. That was meant to prevent the case from simply sitting idle under seal.

2. Seal, sharing, and intra-government coordination

As I mentioned, the seal does not prevent the AG or a local government from sharing the complaint and evidence with other agencies or with law enforcement, “so that the actions may be investigated or prosecuted.” That means, in a tax case, you would expect coordination with the Department of Taxation and Finance, perhaps with the IRS, and in a City case, with the Department of Finance.

3. Government options

After investigation, the State or local government can:

- Intervene and proceed with the action, in which case the complaint is unsealed and served.
- Decline to intervene, allowing the relator to conduct the action.
- Move to dismiss the action notwithstanding the relator’s objections, but only after notifying the relator and giving him an opportunity for a hearing.

4. In the City case, it ultimately chose to decline, not to move to dismiss. That is important, because a motion to dismiss would have required a hearing where I could have put the City’s investigation—or lack thereof—on the record.

### 29. “Statute of limitations: Relator vs State/City” - SOL Sheet

Now let me say a word about the statute of limitations, because it’s a key feature of the tax amendments and it also affects strategy.

Under the New York FCA, as amended, a qui tam action generally must be filed within 10 years of the violation. That 10-year period is longer than the standard New York tax assessment limitations periods for many taxes—often three years, extended to six for substantial understatements—but it is still finite.

So as a relator, you are on a 10-year clock. If you discover fraud in 2001, but the applicable legislation is not passed for many years, you can find yourself right up against that 10-year boundary.

By contrast, the State and the City, acting as sovereigns, face different limitations in tax matters. Under the New York Tax Law, in cases of fraud or non-filing, the statute of limitations on assessment is effectively open-ended—the taxing authority can assess at any time. In other words, for fraud, there is no statute of limitations in the tax law sense.

That creates the key tension in this presentation: the relator's FCA claim is subject to a 10-year limit, but the underlying tax liability may still be enforceable by the State or City indefinitely if fraud is shown. In my case, that is why the reverse-false-claims theory mattered so much. It was the theory that allowed me to tie later refund filings or refund-related submissions back to an underlying tax deficiency and thus fit the relator claims within the FCA limitations period. By contrast, the State and City, proceeding directly as taxing authorities rather than through my relator suit, were not confined in the same way and could still pursue direct tax-fraud theories of their own.

From a policy perspective, some commentators have criticized the 10-year FCA period as too long compared to normal tax assessment periods. Others have noted that for fraudulent non-filers, the FCA's 10-year bar can actually be shorter than the open-ended tax assessment window. In other words, the relator can be time-barred before the tax authority is.

For purposes of this CLE, the important point is this: my relator claims and any direct State or City tax-fraud claims were not the same thing. My relator claims had to fit within the FCA's 10-year window and therefore depended heavily on the reverse-false-claims framework. The State and City, if willing to act directly as taxing authorities, were in a different position and could still pursue direct fraud theories based on the same underlying conduct. That distinction is essential to understanding both the litigation strategy and why I later urged the City to consider direct action based on the IRS file, even if my qui tam theories were being blocked.

Let me highlight a few other features of the New York FCA and its tax amendments that matter for this case:

- Tax case thresholds: As I mentioned, the tax amendments apply only where the defendant's net income or sales exceed $1 million and the alleged damages exceed $350,000. PSINet's bankers obviously qualify on both counts.

- Pleading standard in FCA tax cases: The amendments also clarified that the initial pleadings in a FCA case "need not necessarily identify each specific claim that is alleged to have been fraudulent," as long as the facts alleged provide a reasonable indication that violations occurred and give enough notice for the government to investigate and for defendants to defend. That language was, in part, a response to decisions that had demanded very granular pleadings at the outset. In my case, it supported my approach of describing the fee-shifting scheme and then tying it to refund behavior over time, rather than trying to list every specific refund claim, which was not possible because no jurisdiction would provide me with this information.

- Local government participation: The statute explicitly contemplates that local governments can bring or participate in FCA actions on their own behalf or for their subdivisions. That is the legal basis for New York City's role in Willcox II, and for the court's decision to put the City in the driver's seat via the Amended Sealing Order, discussed below

- Government motion to dismiss: Finally, the statute allows the State to move to dismiss a qui tam action over the relator's objection, after notice and an opportunity for a hearing. That's important because, in my case the City never chose that route. Instead, they declined and allowed the case to be dismissed in more indirect ways. If either jurisdiction had moved to dismiss under the FCA, I would have had a formal hearing to test their reasons. That never happened.

## 30. RAY Opinion

Slide 22 — The Avi-Yonah (RAY) Opinion

Title: Expert Confirmation: The Tax Fraud Was Not Speculation

Body:

On June 2, 2016, Professor Reuven S. Avi-Yonah — the Irwin L. Cohn Professor of Law and Director of the International Tax LL.M. Program at the University of Michigan — issued a detailed opinion letter reviewing the PSINet transactions.

His conclusions were unequivocal:

The PSINet placements were "apparently structured … to avoid U.S. federal, New York State and New York City income tax"

85% of investors were U.S.-based; the actual work was performed by U.S. affiliates; both closings took place in New York City

"In my opinion, the income earned by the Defendants from the Placements should have been subject to U.S. federal and New York State and City income tax, as they applied in 1999"

The IRS file likely reflects a recovery already obtained — consistent with Relator's account that the IRS collected tax but denied a whistleblower award on a pretextual ground

Sadly, this opinion was not obtained in time to be placed in the record before Willcox I was decided. It was therefore not before the court. But it is significant for present purposes because it confirms that the transfer-pricing and related international-tax issues were substantial and had been analyzed by a leading expert. For this presentation, I do not need to unpack those issues in detail; it is enough to note that Professor Avi-Yonah addressed them and concluded that the allegations were not speculative.

## 31. First Page of Willcox I

Title: Willcox I — "Speculative" and a "Fishing Expedition"

Body:

Less than four weeks after Professor Avi-Yonah's opinion, the Appellate Division, First Department decided State of New York ex rel. Thomas C. Willcox v. Credit Suisse Securities (USA) LLC et al., 140 A.D.3d 622 (1st Dept. 2016).

The result: dismissal unanimously affirmed.

At oral argument, one member of the panel had already signaled the court's view — characterizing the case as based on "speculation" and amounting to a "fishing expedition." The written opinion reflects that framing. On its face, it addresses only the reverse false claims theory under State Finance Law § 189(1)(g), holding that the theory — that defendants' alleged underreporting created a carry-forward deficiency rendering subsequent refund filings false — "is speculative."*

The opinion also characterizes as speculation the theory that the State would withhold a refund when confronted with a pre-existing deficiency. That characterization is difficult to square with the record: that theory rests on the State's actual policy in such circumstances — a policy the State declined to disclose to Relator.

The more significant problem is the "fishing expedition" label. A fishing expedition means a plaintiff has no evidence and hopes discovery will supply it. But the record here included:

Offering memoranda covers listing only U.S. affiliates — not one word about U.K. entities

Cross-receipts, comfort letters to PwC and Arthur Andersen, and the Agreement Among Initial Purchasers — all prepared by the banks themselves, all identifying the U.S. affiliates as Initial Purchasers

Comparable transactions (Azurix, Versatel) showing the PSINet fee-shifting structure was anomalous

An IRS history consistent with a recovery having been obtained on the very same tax theory

That is not a fishing expedition. That is a case built on the banks' own contemporaneous documents.

## 32. Second Page of Willcox I

Title: What the Opinion Did Not Say

Body:

Whatever one makes of the outcome, the Willcox I opinion raises a concern that practitioners on all sides should take seriously: it disposed of claims for tens of millions of dollars in alleged tax fraud in less space than many courts devote to five-figure commercial disputes.

Most notably, the First Department:

Never identified the specific tax fraud allegations or the documents on which they rested

Never mentioned the offering memoranda covers, the cross-receipts, the comfort letters, or the AAIP — the banks' own papers in which U.S. affiliates repeatedly called themselves Initial Purchasers

Never mentioned Azurix or Versatel — the comparable transactions showing PSINet's structure was not standard market practice

Never engaged with the assignment-of-income doctrine, the source-of-services rules under IRC § 861, or the economic substance framework

Never addressed the IRS history, including the 2006 recovery and the denial of a whistleblower award on what Relator contends was a pretextual ground

The consequence is significant. Because the court did not set forth the underlying allegations or documents, there is no way for a reader — or a reviewing court — to evaluate whether the "speculation" and "fishing expedition" characterizations are consistent with the record. Had the opinion engaged with even a portion of that documentary record, any international tax practitioner reviewing it would have been hard-pressed to describe the allegations as lacking an evidentiary foundation.

This is not an attack on the court. Courts are busy, dockets are crowded, and summary affirmances serve an important institutional function. The point for CLE purposes is different: in complex tax fraud whistleblower cases, a brief dismissal that does not engage the documentary record creates ambiguity about what was actually decided — and that ambiguity can haunt subsequent proceedings, as it did in Willcox II, where defendants successfully invoked res judicata and collateral estoppel arguments that a more detailed Willcox I opinion might have foreclosed.

## 33. So, to tie this back to the PSINet/Willcox story:

- We have a statute that explicitly invites tax-fraud cases against large taxpayers, with a 10-year relator limitations period and virtually no limitations barrier for the State or City acting as tax authorities in fraud cases.

• We have procedural mechanisms — seal, status reports, investigation duties—that are meant to ensure that government lawyers take these cases seriously.

• And we have substantive tools—reverse false claims, and the ability to use public documents plus independent analysis—that make case like *Willcox I* and *Willcox II* legally viable, at least on paper.

Against that backdrop, the real questions—the ones we're exploring today—are: how did the process actually work in practice, what went wrong, and what can practitioners on all sides do better the next time a complex tax-fraud whistleblower case lands in New York State Supreme Court?

With that foundation in place, we can now plug back into the specific PSINet facts and the CLE segments we've already outlined.

In December 2016, the New York State Attorney General moved to have the City of New York handle the second case—what I've called *Willcox II*—the case brought on behalf of the City for its corporate franchise tax. The idea was that the City was the real party in interest for the underpaid City tax, and the City's Law Department should make the key decisions.

### 34. Sealing Order page 1

On January 23, 2017, the court entered an Amended Sealing Order in that case. It did three important things.

First, it kept the case under seal. Second, it confirmed that the City of New York Law Department would have control of the investigation and the decision whether to intervene, decline, or move to dismiss. And third—and this is crucial—it required the City to file under-seal, ex parte status reports with the court every six months, "describing the status of its investigation of the matters raised in the qui tam complaint," until the court lifted the seal and terminated the government's exclusive decision period.

Those reports were due at six-month intervals from January 23, 2017—so roughly July 23, 2017; January 23, 2018; July 23, 2018; and so on. I, as Relator, would not see those reports. The court would. I would only see what the City chose to tell me.

So, in theory, this is a familiar FCA structure: the government gets time to investigate under seal; it keeps the court informed; and then it decides whether to intervene. In practice, as the NYC Appendix and my 2023 letter to NYC Attorney Y show, this structure can be abused.

### 35. Sealing Order page 2

Let's walk through the City's obligations and the actual record.

Under the New York False Claims Act, the government has an obligation to investigate the allegations in a qui tam complaint. Section 190 of the State Finance Law lays out the City's options:

- It can move to dismiss the action, but only after notifying the relator and providing an opportunity for a hearing.
- It can decline to intervene and allow the relator to proceed.
- Or it can intervene and take over the prosecution.

What it cannot ethically do, in my view, is simply leave the case in a state of limbo indefinitely under seal, while telling the court that it is engaged in active investigation and telling the relator that it's "still reviewing" but never making a decision.

36. [Slide – List of Emails: documenting the "investigation"] – how many pages

This slide is my attempt to document, in real time, what actually happened between January 2017 and the eventual declination in 2019. It contains the sealing order, my emails with Atty X, my transmittals of research and factual information, and later communications about the City's refund policy and related issues.

Let me give you a sense of the chronology.

Shortly after the Amended Sealing Order in January 2017, I began communicating with NYC Atty X (sometimes will be referred to in shorthand as "the City"). The Appendix shows a February 8, 2017 email chain beginning the process of scheduling conversations. On February 28 and March 14, 2017, there are further scheduling emails. In May 2017, more scheduling emails. In almost half a year, nothing but scheduling.

Finally, in May 2017,  the City requested transmitted the EINs for the defendants, so the City could pull tax data and returns. That's at page 13 of the NYC Appendix. On July 3, 2017, I transmitted the names of the defendants, again to facilitate the City's investigative work.

These are not trivial steps. If you want to know whether the banks underpaid New York City franchise tax, the first thing you need is: what are their entity names, and what EINs are they filing under?

In mid July 2017, the City filed its first status report. At that point, I suspected the City was dragging its feet in the hopes I would just dismiss the case. However, I suspected any attempt to discuss this issue would be futile.  So I decided to go along with the City's "schedule".

Consistent with my thoughts, by October 2017, I was having to chase the City for a status update. On October 17, 2017, the Appendix shows an email from me requesting a status report, and a follow-up the same day. Nothing had happened This is months after the first six-month status report should have gone to the court.

In January 2018, the pattern repeats. There is a January 5, 2018 note about a call to the City and the response, and on January 18, 2018 there is an email from me about the upcoming report to the court. The Amended Sealing Order required a report; I had no access to it; all I could do was ask the City what it was telling the judge.

On February 9, 2018, I transmitted a substantive memorandum. On February 12, 2018, the Appendix shows me emailing to request confirmation that NYC Atty X had received it.

By March 2018, I was sending examples of other enforcement actions, to show that agencies could and did pursue complex frauds against well-resourced defendants along side the federal government.

On April 11th, 2018, earlier that year, the City in response to an email I had sent the Senate Finance Committee, has stressed the City "reserves all rights." That kind of language—"we reserve all rights" — is a way of avoiding commitment. It gave the City maximum flexibility but left me further suspicions I was participating in a charade.

By May 2018, I was sending the City a detailed letter about out-of-warranty issues, again trying to prompt real engagement. On June 4, 2018, I sent more information, indicating the City would benefit from contacting the IRS about the case.

The status reports filed in July 2017, and January and July of 2018 I never saw. What I saw were calendar emails, occasional "we are reviewing" reassurances, and a notable lack of tangible investigative steps—no document subpoenas to the banks that I saw, no efforts to obtain the IRS file, no interviews of key witnesses.

## 37. – Emails, page 2

The Appendix shows that as of July 2018, more than a year and a half after the City took control, I was still trying to get clear statements of the City's position. On July 3, 2018, there is an email about holiday scheduling. On July 5, 2018, I transmitted a history of emails and phone calls to the City, essentially memorializing what I understood to be the bases for the City's reluctance to intervene.

On July 15, 2018, I sent the City a substantive letter,. That letter recites, in more detail, the tax-fraud theory and the reasons I believed the City had a strong case.

Then, on July 23, 2018, there is an email from Atty X regarding "fraudulent intent." This email, as I understood it, was part of the City's effort to suggest that it had not yet seen enough to establish fraudulent intent by the banks. That's a classic way to move away from the merits without saying "we're not going to pursue this."

From my perspective as the relator, this added up to a pattern: lots of talk, very little action, and no clear decision. From the court's perspective, what they saw were ex parte status reports, presumably telling them the City was "continuing to investigate."

## 38. M y characterization in the NYC Attorney Y letter] – first page

In my 2023 letter to NYC Attorney Y, I put it this way:

"Atty X never showed Relator these ex parte status reports. However, the review of the emails and phone calls between the two attorneys… demonstrate that not only did Atty X never truly investigate the claim, Atty X took best efforts to lead Relator into believing Atty X was so doing, in the hope Relator would simply abandon the claim."

I argued that the City's apparent strategy was to let the clock run, to see if I would drop the case, and to rely on the fact that, if the City never intervened, the trial and appellate courts would eventually dismis

The February 27, 2023 lette lays out, in detail, the history of the PSINet litigation, the IRS whistleblowing, the New York State and City qui tam cases, and the City's conduct under the seal order. It describes NYC Atty X's alleged "gaslighting," the ex parte status reports, and the decision to decline. It references the Avi-Yonah opinion and the potential significance of the IRS file.

In that letter, I recommended that the City, having shown what I call irreparable bias against a case involving approximately $30 million in tax fraud against the City, should be excused from making any more decisions about it. I suggested the Law Department obtain the IRS file and consider a direct action against the banks, regardless of what happened in my qui tam case.s on preclusion and speculative-pleading grounds, as they had in Willcox I

## 39. Letter to Attorney Y- Table of Contents

In that same letter, I concluded that the City had demonstrated irreparable prejudice to the Relator's case and should be excused from making any more decisions about it. I asked that the New York City Law Department —as opposed to the New York City Department of Finance — take over any future decisions, and that the City obtain the IRS file.

40. [Slide – NYC's non-response]

Now I want to talk briefly about NYC City Attorney Y, because this illustrates another dimension of gatekeeping: oversight that never quite materializes.

Email promising Response

NYC Atty Y, in its capacity as an oversight figure, stated in writing that it would respond to this letter. As of the time we are speaking now, she has never done so.

From a professional responsibility perspective, this matters. When a lawyer in a senior oversight position tells a relator—or any member of the public—that she will respond in writing to a detailed allegation of governmental mishandling and then fails to do so, that itself becomes part of the pattern. It reinforces the perception that the system is more interested in managing optics than in confronting substantive allegations of tax fraud and government failure.

So, what lessons do I think all of you—plaintiff's lawyers, defense counsel, and government attorneys—should draw from this record?

From the relator's side, the NYC Appendix shows the importance of documenting everything. Every call, every email, every transmitted memo, every instance in which you provide names, EINs, policy documents—these should be recorded and, where possible, preserved in a form you can later show a court. When the City later claims "we investigated and found nothing," you want to be able to say, "Here is what I gave them; here is how they responded; here is what they did not do."

From the government side, this record should be a cautionary tale about what not to do. When a court orders you to file periodic status reports describing the status of your investigation, those reports should reflect genuine efforts, not just the passage of time. If the internal view is "we're never going to intervene in this case," you should candidly consider whether to decline earlier rather than later, and you should recognize that stringing a relator along for years raises serious ethical questions.

From the defense side, there's a temptation to welcome governmental passivity. If the City appears to be slow-walking, you might think, "Good, this case is going nowhere." But there is also a risk: a record like this can make courts and legislators more sympathetic to relators' calls for reforms—tighter deadlines on government elections, more transparency, and possibly limited discovery while under seal. It can also complicate your preclusion arguments if an appellate court is persuaded that the prior proceedings didn't fully and fairly adjudicate the tax-fraud issues.

What are the red flags of a cosmetic investigation?

- Long periods under seal with no visible investigative steps—no subpoenas, no requests for records you would expect, such as the IRS file or internal City tax-refund files.
- Repeated assurances—“we are reviewing,” “we reserve all rights”—without any movement toward an intervention, declination, or motion to dismiss.
- Ex parte status reports that the relator never sees, combined with what the relator experiences as drift and delay.
- Oversight officials who promise written responses and then never provide them.

When you see that combination, you should at least entertain the possibility that the “investigation” is primarily a way of managing the case politically, not a sincere attempt to evaluate and, if warranted, litigate the underlying tax-fraud allegations.

### 41. [Segment transition – toward doctrine and ethics]

In the third segment, I want to connect these facts to doctrine and ethics.

We’ll look at the tax doctrines implicated by the PSINet structure—assignment of income, sourcing of services, the relationship between federal and New York tax bases—and then we’ll talk about preclusion, reverse false claims, and what all of this means for ethical practice by government lawyers and by relator’s counsel.

We'll also work through three hypotheticals: one from the perspective of NYC Atty X, one from the perspective of Relator's counsel, and one from the perspective of an Appellate Division judge in New York. The goal is to force ourselves to ask, "What should have been done differently?" not just "What did happen?"

Here is Segment 3, focusing on doctrine, ethics, and the three hypotheticals.

### 42. [Slide – Tax doctrines and the IRS file]

Let's now put some doctrinal structure on top of the fact pattern we've walked through.

At the federal level, the PSINet transactions implicate two core tax concepts: the assignment-of-income doctrine and the source-of-services rules.

The assignment-of-income doctrine, in simple terms, says that income is taxed to the person who earns it—who controls the earning of it—not merely to the person whose name is on the check. If a person or entity performs services in the United States and then directs the income from those services to an affiliate abroad, the IRS can treat that income as earned by the U.S. entity.

The source-of-services rule, under section 861, provides that income from services is sourced where the services are performed. So if the key underwriting and placement services are performed in New York—meeting investors, running the book, allocating the bonds—the fee associated with those services is U.S.-source income.

Reuven Avi-Yonah's opinion, makes both of these points. He observes that the PSINet transactions were, in his words, "crudely structured so that the true principals in New York would do 85% of the work, and use their UK affiliates to do 15% of the fundraising overseas, but be the 'initial purchasers' for the whole deal, so that the funds collected in New York City would be wired to the UK for taxation at a lower rate."

He further opines that the IRS file would be important, and that if my reporting to the IRS caused a recovery, then the defendants would be bound by that recovery to owe State and City taxes as well. That's not because the federal case is preclusive in a formal res judicata sense, but because it would show that, at least once, the IRS accepted the position that the income belonged in the U.S. tax base.

On the New York City side, the City's franchise tax base tracks federal taxable income with adjustments. So if fee income that should have been on U.S. tax returns was instead booked in the U.K., you'd expect a corresponding underpayment to the City. That's the heart of the tax-fraud theory in Willcox II. Layered on top of that is the reverse false claims theory under the New York FCA: the idea that when a taxpayer with a preexisting deficiency files a claim for refund, or asks to have an overpayment applied to a subsequent year, the failure to disclose that underlying deficiency can itself be the actionable falsehood. That theory matters here not because I need to give a long FCA lecture, but because it explains both why my relator claims differed from direct sovereign tax claims and why the City's control of the sealed FCA process mattered so much. Even if the appellate court later rejected the FCA route for these transactions, understanding that theory is still essential to understanding the procedural history.

In other words, the doctrine is there. The question is whether courts and government lawyers will use it in a case that implicates large financial institutions and complex cross-border structures.

43. [Slide – Preclusion and prior PSINet rulings]

Next, we have to think about preclusion—res judicata and collateral estoppel.

In PSINet I and II, the federal courts confronted a different framing. The plaintiff—PSINet Liquidating LLC—argued that the banks' discounts were really usurious brokerage fees under New York's General Obligations Law section 5-531, and that the courts should treat the transactions as disguised loans. Judge Daniels rejected that. He said the transactions were "nothing more than a common securities underwriting," not loans, and that section 5-531 did not apply to sales of securities between corporate issuers and institutional investors.

Crucially, the PSINet I decision treated the U.K. entities as the Initial Purchasers and the U.S. entities as their agents, focusing on the purchase agreements' definitions. The Second Circuit later affirmed that view, emphasizing that the purchase agreements and other documents evidenced "a common sale of debt securities between two principals," PSINet and the foreign banks, with a separate resale to the ultimate investors.

Those rulings became the backbone of the collateral estoppel and res judicata arguments used against me later in *Willcox I and, to a lesser extent, in Willcox II*. The defendants argued, essentially: "We have already been adjudicated to be Initial Purchasers and principals, not loan brokers; you can't relitigate that under a different statute."

From a pure doctrinal standpoint, there are counterarguments: the causes of action are different, the sovereign is different, and the factual record is richer in the later cases. The City was not a party to PSINet I or II. –Willcox II included the Avi-Yonah opinion—that were not part of the PSINet record the first time around.

Whether that's enough to avoid preclusion under New York law depends on how courts frame the "transaction" and the "issue." If the "issue" is defined as "Were the U.K. entities principals and the U.S. entities agents in the PSINet transactions?" then preclusion bites hard. If the "issue" is reframed as "Did the banks underpay New York City franchise tax by assigning U.S.-earned fee income to U.K. affiliates?" then the earlier cases look less preclusive.

But courts are human. Once they've written one narrative—"this was a standard underwriting"—it's psychologically hard to embrace a new narrative—"this was a tax-avoidance scheme"—even if the documents support it. That's part of what you're up against in any complex whistleblower matter that comes after earlier litigation.

44. [Slide – Ethics and best practices, text needs to be inserted

45. Hypo 1 title]

Let me start with Hypo 1: You are Atty X, a lawyer in the New York City Law Department assigned to handle Willcox II under the Amended Sealing Order.

The order has just been entered. It requires you to file under-seal, ex parte reports every six months describing the status of your investigation. You have in hand:

• The PSINet appendices, including the fundraising chart at A287/A921 showing DLJ as primary banker before and after 1999, and the anomalous use of U.K. Initial Purchasers only in 1999

• The offering memoranda covers, showing only U.S. placement agents on the front and back.

• The closing documents, cross-receipts, comfort letters, and AAIP we reviewed earlier.

• The Avi-Yonah opinion, which says the transactions were apparently structured to evade U.S., State, and City taxes and emphasizes the importance of the IRS file.

You also know that PSINet I and II have come out badly for the issuer. You know that the State case was dismissed and affirmed on appeal. You know that the defendants will assert preclusion. Inside the City, there may be concerns about suing major financial institutions in a complicated tax case.

Now, for Relator's and defense counsel:

Relator question: What would you expect from a "good-faith" City investigation in the first year? If you saw, as I did, mostly scheduling emails and vague assurances, what would you do differently from what I did—would you move sooner to ask the court for a conference, or to set a deadline on the City's election?

Defense question: If you later learn that the City never really investigated, do you see that as purely helpful—"the City declined, the case must be weak"—or are you concerned that it might, on appeal, make judges more inclined to remand for further development, or to be more generous to the relator?

Hypothetical 2 – You are relator's counsel

46. [Slide – Hypo 2 title]

Hypo 2: You are relator's counsel in New York. The facts are as I described in the NYC Appendix.

You have provided the City with everything you reasonably can: detailed appendices, EINs, names of defendants, legal memoranda, expert opinion, IRS correspondence, and examples of comparable cases. The City files ex parte reports you never see. You receive repeated assurances that the case is under review, but no concrete actions and no requested timetable for a decision.

Relator question: Under New York law and practice, when do you shift from "cooperative mode" to "pressure mode"?

- Do you send a letter to the court, under seal, asking for a status conference on the government's election, citing the Amended Sealing Order and the time that has passed?
- Do you send a formal letter to the City asking for a written position by a date certain, and noting that prolonged delay prejudices your ability to litigate?
- Do you start building a record for a possible motion to disqualify the City from making further decisions, as I ultimately suggested in my 2023 letter to the City?

What practical and ethical constraints do you feel? Are you worried about antagonizing the very office that controls your case? How do you balance that against your duty to your client and to the public fisc?

Government question: From your side, what internal policies should exist to prevent cases from lingering in this kind of limbo? Should there be default timelines for intervention decisions? Should ex parte status reports be subject to internal review to ensure they reflect actual work?

Defense question: Do you believe relators should have tools to force a government election earlier? Or do you think the status quo—broad government discretion under seal—is appropriate, even if it produces cases like this one?

### 47. [Slide – Hypo 3 title]

Hypo 3: Now imagine you are sitting on the Appellate Division, First Department, in a case like Willcox II.

You have a record that includes:

• Prior PSINet decisions characterizing the transactions as securities underwritings between PSINet and foreign principals, with U.S. affiliates as agents, in the context of General Obligations Law section 5-531 and usury.

• New evidence in the City case: the PSINet fundraising chart, the offering-memorandum covers, the cross-receipts, comfort-letter requests, AAIP, and the Avi-Yonah opinion, all of which point to U.S. affiliates as economic principals and to tax-driven income shifting.

• A procedural history in which the City controlled the case under seal for years, then declined, and the trial court dismissed on preclusion and speculative-pleading grounds.

Judicial question: How do you apply New York preclusion law?

Do you say: "The nucleus of operative fact is the same; these transactions have already been litigated; we're not going to allow another round under a different statute"? Or do you say: "The causes of action and the sovereign interests are different, the City was not a party before, and there is significant new evidence about tax and economic substance; therefore, we will not treat the prior decisions as dispositive"?

What weight, if any, do you give to the City's conduct under seal? If you see a record suggesting that the City did not seriously investigate a plausible tax-fraud theory, does that affect your willingness to give the relator some leeway—to remand for limited discovery, for example, or to allow an amended pleading?

For our government and defense lawyers:

Government question: If an appellate court were to criticize a City or State office for cosmetic investigations in a published opinion, what institutional changes would you expect? Are those changes desirable?

Defense question: From your client's perspective, is finality the overriding value, even if it is achieved partly through government inaction? Or is there a long-term benefit to having a system that insists on real investigation before dismissing serious tax-fraud allegations?

48. [Slide 16 – Closing ethics points]

Let me close with a few concrete takeaways for each group in this room.

For government lawyers in New York:

• If you take control of a qui tam case and represent to a court that you are investigating, make sure you really are. The duty of candor to the tribunal doesn't stop at avoiding lies; it includes avoiding half-truths that create a false impression of diligence.

• If you know early that your office will not intervene, strongly consider declining earlier rather than later. Let the relator proceed or not, but don't keep the case in a holding pattern simply to avoid making a hard decision.

• When an oversight official, like NYC Atty Y, in my case, tells a relator the City will respond in writing to a detailed allegation of mishandling, that response should actually be delivered. Failing to do so undermines trust not just in you, but in the institution you represent.

For relator's counsel:

• Document everything. Use records like the NYC Appendix as a model—every email, every memo, every transmittal of EINs or policy documents, every promised callback.

• Don't be afraid, when appropriate, to ask courts to enforce the government's obligations under sealing orders. A respectful, sealed request for a status conference can sometimes break a logjam.

• Build your case on original documents—offering memoranda, cross-receipts, AAIPs, comparables like Azurix and Versatel—so that even if prior decisions have gone badly, you can show that important facts were never squarely presented.

For defense counsel:

• Be prepared to address not just the formal labels in the purchase agreements, but the economic reality in the ancillary documents. Cross-receipts, accountant letters, and internal agreements can and will be used to argue that your U.S. affiliates are principals for tax purposes.

• Recognize that how you and your clients respond to whistleblowers and government investigations now will shape the legal environment later. If the system looks rigged against good-faith relators, the pressure for reforms will grow.

Finally, for all of us:

These cases sit at the intersection of tax law, securities practice, and government ethics. They are difficult. They are politically sensitive. But they are exactly the sort of cases where robust processes, honest communications, and careful use of documentary evidence matter most. The PSINet record, the NYC Appendix, and the 2023 Letter to the City letter are, in my view, a cautionary tale—but also a teaching tool.

I hope this discussion has given you not just doctrine, but a sense of the human and institutional dynamics involved, and some practical tools you can use the next time you are on any side of a complex whistleblower case.

Thank you.

.